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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE PRESIDING
PATRICIA STEWART, D.O.,)
)
Plaintiff,)
) ED CV 13-1670-ODW(DTBx)
vs.)
)
AMERICAN ASSOCIATION OF PHYSICIAN) VOLUME 4
SPECIALISTS, INC., WILLIAM)
CARBONE; ROBERT CERRATO; SVETLANA) PAGES 1 - 150
RUBAKOVIC and DOES 1-100,)
)
Defendants.)
)
_____)

REPORTER'S TRANSCRIPT OF
TRIAL - DAY 4
FRIDAY, JANUARY 29, 2016
8:09 A.M.
LOS ANGELES, CALIFORNIA

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I N D E X

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1 LOS ANGELES, CALIFORNIA; FRIDAY, JANUARY 29, 2016

2 8:09 A.M.

3 -o0o-

4 (Call to Order of the Court.)

5 (Open court out of the presence of the jury.)

6 THE COURTROOM DEPUTY: Calling Item 1,
7 ED CV 13-1670, Patricia Stewart, D.O. versus American
8 Association of Physician Specialists, Inc., et al.

9 Counsel, may I have your appearances, please.

10 MS. HILAIRE: Good morning.

11 Mika Hilaire appearing on behalf of the plaintiff,
12 Patricia Stewart.

13 THE COURT: Ms. Stewart.

14 MR. CONWELL: Don Conwell on behalf of plaintiff,
15 Dr. Patricia Stewart.

16 THE COURT: Mr. Conwell.

17 MR. SCHNEIDER: Eric Schneider and Leila Rossetti
18 for the defense.

19 THE COURT: Counsel.

20 MS. ROSSETTI: Good morning, your Honor.

21 THE COURT: I understand there's something we need
22 to discuss?

23 MR. SCHNEIDER: Yes, your Honor.

24 THE COURT: Okay.

25 MR. CONWELL: Yesterday morning we were told that

1 they did not represent all the defendants; that Mr. Kruzhkov
2 represented certain defendants --

3 THE COURT: Yes.

4 MR. CONWELL: -- and they represented the others.
5 So are we allowed to proceed without counsel for the -- for one
6 of the defendants?

7 MR. SCHNEIDER: Your Honor, we represent all of the
8 defendants.

9 THE COURT: That isn't what was stated on the record
10 on the first day of trial.

11 MR. SCHNEIDER: I said for the defendants and I said
12 all three of them.

13 THE COURT: All right. If you're making that
14 representation that you represent all of the defendants, fine.

15 MR. SCHNEIDER: Yes. It's on the pleadings. We
16 have from the outset.

17 THE COURT: Okay. Let's go.

18 MR. CONWELL: You recall yesterday when we were
19 concerned that they were both objecting --

20 THE COURT: Yes.

21 MR. CONWELL: -- that that was the opposite view.

22 THE COURT: Exactly.

23 MR. SCHNEIDER: And at that point, Mr. Kruzhkov
24 stopped speaking on objections.

25 THE COURT: Are we playing fast and loose?

1 MR. SCHNEIDER: I don't think so.

2 THE COURT: You don't?

3 MR. SCHNEIDER: No.

4 THE COURT: Because on the first day of trial you
5 indicated he was representing the other defendants. That's all
6 right. Okay. Fine. You're making the representation now, so
7 we will proceed in his absence. Why is he not here?

8 MR. SCHNEIDER: He is simply not coming today.

9 THE COURT: Okay. All right. Let's go.

10 MS. ROSSETTI: Your Honor, Mr. Kruzhkov does
11 represent AAPS as do we, just like Mr. Conwell and Ms. Hilaire
12 both represent the plaintiff.

13 THE COURT: Counsel, that isn't the point. The
14 point was that he represented separate defendants; that's why I
15 permitted him to interpose additional objections. You don't
16 have two or three counsel interposing objections, right?

17 The only reason I allowed it was because he made the
18 representation, or at least he led all of us to believe that he
19 was representing different defendants. Is that clear?

20 MS. ROSSETTI: Understood, your Honor.

21 THE COURT: All right. Let's go.

22 MR. SCHNEIDER: The other matter is that Mr. Young
23 is the plaintiff's -- one of the plaintiff's expert. He's
24 going to be testifying today. He was in the courtroom all day
25 yesterday.

1 MR. CONWELL: And your Honor --

2 THE COURT: Listen, if you knew that --

3 MR. SCHNEIDER: No, I did not know that. I did not
4 know who he was.

5 THE COURT: Nor did I.

6 MR. SCHNEIDER: I understand that. But the
7 plaintiffs did.

8 THE COURT: Oh, all right. Listen, it's too late to
9 fix it, isn't it? What would you propose we do?

10 MR. SCHNEIDER: The Court ordered witnesses be
11 excluded.

12 THE COURT: That's not my question. What do you
13 propose we do now? Had the gentleman been in the courtroom
14 when I made that order, that would be a different situation.
15 Then I'd find him in contempt.

16 Who is he, anyway?

17 MR. CONWELL: Dr. Young.

18 THE COURT: Ah, yes.

19 MR. CONWELL: Your Honor, may I speak to this? The
20 rule against --

21 THE COURT: My understanding -- No. 1, my
22 understanding with respect to what this gentleman's testimony
23 is was completely unaffected by anything we heard yesterday.

24 MR. SCHNEIDER: I can't disagree with that, your
25 Honor.

1 THE COURT: Okay. Then let's -- I don't know.
2 What's the point of this?

3 MR. SCHNEIDER: Well, I don't think witnesses should
4 be here if they've been excluded.

5 THE COURT: Because their testimony might be
6 influenced by what other witnesses have to say. That isn't the
7 case with this gentleman, is it?

8 MR. SCHNEIDER: I do -- I agree, your Honor.

9 THE COURT: Okay. Why we wasting time with this?

10 MR. CONWELL: I agree, your Honor. And the rule
11 against --

12 THE COURT: Get the jury out her.

13 MR. CONWELL: -- is for fact witnesses, not --

14 THE COURT: That's the other thing.

15 MR. CONWELL: He is an expert.

16 MS. HILAIRE: Your Honor, I've never seen a
17 situation where an expert was excluded, your Honor.

18 THE COURT: It's not. Experts surely are not, even
19 when their counterpart is on the stand.

20 MS. HILAIRE: They're allowed to listen to the
21 testimony.

22 THE COURT: Yes. All right. It's kind of like --
23 well --

24 (Open court in the presence of the jury.)

25 THE COURT: All right. We've been joined by the

1 jury.

2 Plaintiff's next witness, please.

3 MR. SCHNEIDER: Your Honor, should we impress on the
4 record that there's a juror that's not here?

5 THE COURT: Oh, yes. We apparently have now lost
6 Juror No. 1, Miriam Hernandez. She called in indicating that
7 she is too ill to attend trial, so we're now down to six.

8 All right. Your next witness.

9 MR. CONWELL: Call William Carbone.

10 **WILLIAM J. CARBONE, PLAINTIFF'S WITNESS, WAS SWORN**

11 THE COURTROOM DEPUTY: Please be seated.

12 Please state your name and spell your last name for the
13 record.

14 THE WITNESS: William J. Carbone, C-a-r-b-o-n-e.

15 THE COURTROOM DEPUTY: Thank you.

16 THE WITNESS: You're welcome.

17 THE COURT: All right, counsel.

18 DIRECT EXAMINATION

19 BY MR. CONWELL:

20 Q Good morning, Mr. Carbone.

21 A Good morning.

22 Q You are the chief executive officer of the defendant
23 AAPS; is that correct?

24 A Correct.

25 Q And how long have you been the chief executive

1 officer of AAPPS?

2 A March of 1997.

3 Q Is there anybody on staff that you report to?

4 A Excuse me?

5 Q Is there anybody on staff at AAPPS that you report
6 to?

7 A No.

8 Q You are the top, correct?

9 A I'm the CEO.

10 Q The buck stops with you; is that right?

11 A I am the CEO for management, yes.

12 Q Okay. And one of the things that you do is you
13 manage the preparation of the employee manual; is that right?

14 A I help to manage, yes.

15 Q And I'd like you to look at that, which is
16 Plaintiff's Exhibit -- or Exhibit 1718. And if you would turn
17 to page 6.

18 This is the welcome page of the employee manual; is
19 that correct?

20 A Yes.

21 Q And it has a little welcome message and then it
22 says, "This message is from the Board of Directors and the
23 Chief Executive Officer." That's you, right?

24 A Correct.

25 Q And so you're familiar with the employee manual,

1 right?

2 A Yes, I am.

3 Q Okay. And it's important that you be familiar with
4 it since you're the CEO and you're the top guy for staff,
5 right?

6 A Yes.

7 Q Turn to page 11. Let me know when you're there.

8 A I'm there.

9 Q Part of the manual deals with harassment; is that
10 correct?

11 A Yes.

12 Q And the handbook that you manage the preparation of
13 says, "AAPS is opposed to all forms of harassment"; is that
14 correct?

15 A Where does it say that? On that page?

16 Q Well, if you'd look at the computer screen.

17 A Okay. I was looking at the page. Okay.

18 Q That'll help you if you want to find it on the page.
19 You're welcome to. It's under the title Harassment Policy.

20 A Okay. Yes.

21 Q It says, "AAPS is opposed to all forms of
22 harassment"?

23 A My answer is yes. I see it.

24 Q Okay. You don't disagree with that, do you?

25 A No.

1 Q Okay. That's a good thing, right?

2 A I believe it is, yes.

3 Q Okay. "Including sexual, racial, ethnic, age,
4 disability, or religious harassment"; is that correct?

5 A Agreed.

6 Q "Furthermore, verbal or physical conduct directed at
7 a person's race, color, religion, sex, national origin, age, or
8 disability may constitute harassment and is prohibited,"
9 right?

10 A Understood, yes.

11 Q Prohibited means you're not allowed to do it, right?

12 A Correct.

13 Q "Anyone engaging in such conduct is subject to
14 disciplinary action, including, uh, not limited to -- including
15 discharge"; is that right?

16 A Yes.

17 Q And then it says, "At any time if you believe that
18 you have been harassed or have been witnessed -- or have
19 witnessed harassing conduct, you must report the harassment to
20 the Chief Executive Officer or the President of the Board"?

21 A Correct.

22 Q So the harassment's supposed to be reported to you,
23 right?

24 A Uhm, yes.

25 Q Okay. And -- but the manual says more about the

1 topic of sexual harassment than this; is that right?

2 A I would have to review it, but I believe that's
3 correct.

4 Q Well, you knew there was going to be a trial, right?

5 A Of course.

6 Q And you knew that your conduct was the subject of
7 this trial, right?

8 A Understood.

9 MS. ROSSETTI: Objection, your Honor.
10 Argumentative.

11 THE COURT: Overruled.

12 MR. CONWELL: Cross-examination.

13 Q (BY MR. CONWELL:) And Mr. Carbone, you know that an
14 issue in this trial was going to be your sexual harassment and
15 your receiving and forwarding pornography in the workplace on
16 company computers, right?

17 A I would add alleged sexual harassment.

18 Q Okay. But you did not review the employee handbook
19 in preparation for your testimony?

20 A No, I did not.

21 Q Okay. Well, let's see if we can remind you of what
22 it says.

23 Turn to page 23, please. Now, it says in bold, "The
24 following actions, among other things, could constitute grounds
25 for immediate dismissal." You see that?

1 A No. I'm sorry. Is it the top paragraph?

2 Q If you can take a look at the computer screen, and
3 I'm probably going to be doing this throughout our time
4 together, so maybe you could start looking at the screen and
5 then refer to the document, if you'd like?

6 A Okay. I can't see all of it. It's restricted.

7 Q Okay. Well --

8 A So if you'd like me to look at the top --

9 Q Now that you found it on the screen, you're welcome
10 to look at it on the page.

11 A Got it.

12 Q Okay. And it says, "The following actions, among
13 other things, could constitute grounds for immediate
14 dismissal." Do you see that?

15 A Yes, I do.

16 Q Now, what is No. 2?

17 A Harassment.

18 Q Okay. And then what's this one? You see where I'm
19 pointing?

20 A Gross misconduct.

21 Q Okay. And now this next one is of particular
22 interest to me, "displaying, disseminating, or discussing --
23 even discussing pornographic or sexually explicit materials or
24 information." You see that?

25 A Yes, I do.

1 Q And you had a hand in preparing the manual that said
2 that this was going to be the instructions that would guide the
3 conduct of employees of AAPS, including yourself; is that
4 right?

5 A That's correct.

6 Q That's a good policy to have, isn't it?

7 A Yes, it is.

8 Q Because disseminating, discussing, looking at
9 pornography and sexually explicit material on your work
10 computer is degrading to women, isn't it?

11 A Yes.

12 Q And you have and had in 2009, 2010, 2011 female
13 staff; is that correct?

14 A Correct.

15 Q How many of the staff were females?

16 A A vast majority. 75 percent would be my estimate.

17 Q And so you would agree with me that it's a good
18 thing to have a policy that says that you're not allowed to
19 view or even discuss pornographic or even sexually explicit
20 material at the workplace; is that right?

21 A I agree.

22 Q But as we have seen, you actually spent -- you
23 actually did receive and forward and discuss sexually explicit
24 and pornographic material; is that right?

25 A I received and forwarded. I don't recall discussing

1 it other than for this trial.

2 Q Okay. So you never -- I want to make sure I'm clear
3 on this. You never had a discussion with Timothy Bell, your
4 director of governmental affairs, involving any of the
5 pornographic material you were forwarding to him? You just did
6 that on your own with no discussions whatsoever?

7 A The only discussion would have been his request to
8 forward the material to him.

9 Q Okay. Well, did he make a one-time request?

10 A Couple times.

11 Q Two times he requested you do this?

12 A I don't remember precisely, but he made requests.

13 Q And so he -- this seems odd to me. The director of
14 government affairs is going to the top man in the organization
15 to request pornography?

16 A Can't explain that to you.

17 Q And you acquiesced? You said, "Sure, I'll send it
18 to you"?

19 A I did, and that was an error in judgment.

20 Q Well, it was not just an error in judgment. You
21 violated the standards of conduct and subjected yourself to
22 immediate dismissal by degrading women; isn't that correct?

23 A It was an error in judgment and I'm sorry that I
24 made that decision.

25 Q Well, and you should be.

1 A I said I am.

2 MS. ROSSETTI: Objection. Argumentative.

3 Q (BY MR. CONWELL:) You've been doing it for years?

4 THE COURT: Sustained.

5 Q (BY MR. CONWELL:) You did this for years?

6 MS. ROSSETTI: Objection. Argumentative. Objection
7 was sustained.

8 THE COURT: Sustained.

9 Q (BY MR. CONWELL:) This was a different question.
10 You did this for years, didn't you?

11 A No.

12 Q In your deposition, you testified that you were
13 exchanging -- you were receiving and forwarding pictures of
14 women with their clothes off for at least two to three years.

15 A Well, then I stand corrected.

16 Q Would you like me to read your deposition testimony
17 to you?

18 A Your -- your choice.

19 Q Okay. In your deposition, you appeared before a
20 court reporter; is that right?

21 A I did, yes.

22 Q The stenographer just like the stenographer here?

23 A Yes.

24 Q And when we started that deposition, you took an
25 oath to tell the truth?

1 A I did.

2 Q And I asked you to tell the truth, didn't I?

3 A Yes, you did.

4 Q And I asked you and you said that you had been
5 receiving and forwarding pictures of women with their clothes
6 off for at least two to three years; isn't that correct?

7 A Yes. If that's what I said --

8 Q That's what you said under oath?

9 A If that's what I said, that's what the facts are.

10 Q So we can rely on what you said under oath, can't
11 we?

12 A Yes.

13 Q Thank you.

14 Now, the pictures -- the pornographic material that
15 you were receiving and sending to Mr. Bell, you did that while
16 he was reporting to you as your subordinate; is that correct?

17 A That's correct.

18 Q You also agree that what -- the material that
19 Mr. Bell received from you that ultimately we obtained is just
20 a small portion of what you had been receiving and viewing on
21 your company computers over the years; isn't that correct?

22 MS. ROSSETTI: Objection. Lacks foundation.

23 THE COURT: It's a question. Overruled.

24 Q (BY MR. CONWELL:) Isn't that correct, Mr. Carbone?

25 A I don't recall specifically.

1 Q Do you have Exhibit 1591.1?

2 THE WITNESS: Want that back?

3 THE COURTROOM DEPUTY: Yes.

4 (Exhibit 1591.1 previously marked for identification.)

5 Q (BY MR. CONWELL:) You do?

6 A Yes. I do now.

7 Q And you see in here that Dr. Stewart sent a request
8 for admissions as to each and every one of these pornographic
9 photographs and videos asking you to admit that you received
10 them and you forwarded them on to Timothy Bell, and they were
11 all admitted; is that correct?

12 A Yes. Yes.

13 Q So we don't have to spend any more time on that
14 issue. That fact is established; is that right?

15 A Yes.

16 Q Okay. Now, a lot of this was from doctors; is that
17 right?

18 A Physicians.

19 Q Physicians, okay. And some of those physicians were
20 on the AAPS Board of Directors; is that right?

21 A That's correct.

22 Q Take a look at 1591.2, which I think is part of
23 that. It's going to be pages 103 to 104.

24 A Where is the page? At the bottom or at the top?

25 Q It's bottom left-hand corner.

1 A Okay. I see 1591.2. Okay. What was the pages
2 again, please?

3 Q 103 to 104.

4 A Okay.

5 Q Can you pull that up, please?

6 A Yes.

7 Q Okay. You see there's an e-mail at the bottom of
8 103 and it says it's from Doc Feaver, dated December 3, 2009,
9 at 2:57 P.M. That was a Thursday, right?

10 A Right. Correct.

11 Q That's working hours on a work day, right?

12 A Yes.

13 Q And Doc Feaver is on the Board of Directors, right?

14 A At one point he was. I don't recall specifically on
15 this date or this year he was.

16 Q Well, we'll see this in a minute.

17 A Okay.

18 Q But Doc Feaver, actually his name is Brian Feaver,
19 right?

20 A Correct.

21 Q And Brian Feaver is a family practice physician,
22 isn't he?

23 A Correct.

24 Q In Texas?

25 A That's correct.

1 Q He treats families?

2 A He's a family physician from Texas, correct.

3 Q Okay. And we're going to see that he was on the
4 Board of Directors on June 13th --

5 A Okay.

6 Q -- 2012. You remember that, don't you?

7 A I remember he was on the Board of Directors.

8 Q And you remember that this man who was sending you
9 the image we're going to see and some other things that were
10 strictly prohibited by company policy -- we're going to see
11 that this man voted to expel Dr. Stewart, aren't we?

12 MS. ROSSETTI: Objection. Lacks foundation.

13 THE COURT: Overruled.

14 THE WITNESS: I would have to look at the minutes,
15 if he was there at that time. I don't have a precise memory to
16 tell you today that he was there that day and voted. But --

17 MR. CONWELL: Okay.

18 THE WITNESS: Okay?

19 Q (BY MR. CONWELL:) I'm happy to do that. In fact,
20 maybe -- well, let's just finish off with this one e-mail.
21 Let's scroll down here.

22 A Okay.

23 Q Now, this is December 3rd, so he's sending you a
24 Christmas greeting; is that right?

25 Can you scroll down?

1 A That says, "Here's your Xmas tree access," yes.

2 Q And of course, you thought that was totally
3 appropriate for him to be sending that, right?

4 A I did not.

5 Q And you thought it was inappropriate for him to be
6 sending that to you?

7 A It was inappropriate, yes.

8 Q It was inappropriate for him to send it to you, but
9 it was appropriate for you to forward it on to Mr. Bell? Is
10 that what you're saying?

11 A I didn't say that.

12 Q Well, you did forward it on to Mr. Bell?

13 A I did not say it was appropriate. I said what I did
14 was inappropriate. It was an error in judgment.

15 Q Let's look at pages 39 and 40, 039 and 040 in the
16 same exhibit.

17 Now, you can look at the e-mail at the very top.
18 This is June 9, 2009. This is some six months earlier; is that
19 right?

20 A Yes.

21 Q And 3:24 P.M. on a Tuesday, so it's during working
22 hours again, right?

23 A That's correct.

24 Q And so you're receiving this on your AAPS computer?

25 A Yes.

1 Q Okay. And then he has this photograph of a very
2 famous -- or infamous person, right?

3 A Uhm, yes.

4 Q Osama bin Laden. And he's making a joke out of
5 this. He says, "You have to tell the difference between a bad
6 towel head and a good towel head. Study the pictures carefully
7 so you will not confuse the two in a moment of indecision that
8 could save your life. This is the bad towel head."

9 And then if you turn the page to page 40 -- keep
10 scrolling -- "This is the good towel head."

11 And you received that?

12 A Yes.

13 Q And then you thought it was totally appropriate for
14 him to be sending this to you, right?

15 A I didn't think it was totally appropriate at all.

16 Q You thought it was completely inappropriate?

17 A I thought it was inappropriate, yes.

18 Q Okay. And yet even though you thought it was
19 inappropriate, you went ahead and forwarded it to Mr. Bell,
20 correct?

21 A Correct.

22 Q And you knew when you did it that was inappropriate?

23 A Correct.

24 Q I'm going to find that -- well, I'll tell you what.
25 I'm going to come to that Board of Directors minutes from

1 June 13, 2012, and we'll satisfy ourselves that he was one of
2 the people that voted to expel Dr. Stewart.

3 Another Board member was Lloyd Fernald; is that
4 right?

5 A He was a public member.

6 Q He was a member of the Board? He's on the minutes
7 as a member of the Board?

8 A Of not the AAPS Board.

9 Q Okay.

10 A It was a --

11 Q The ABPS Board?

12 A He was not a member of the AAPS Board.

13 Q What is his leadership position in AAPS?

14 A He was a public member.

15 Q Okay. And Lloyd Fernald, a public member of AAPS,
16 was also sending you pornographic material; is that right?

17 A Yes.

18 Q And he sent you a video, a biker video.

19 Turn to page 107. Do you see that?

20 A Yes, I do.

21 Q And this was received by you on December 4th of
22 2009; is that right?

23 A Yes.

24 Q And the subject was Smart Biker and there's five Xs,
25 XXXXX, right?

1 A Uhm, yes.

2 Q And so when you see a lot of Xs like that, doesn't
3 that send -- it's kind of a warning to you that this is going
4 to be sexually explicit?

5 A Yes.

6 Q Okay. Now, let's take a look at the video that he
7 sent to you. And while he's pulling that up, a lot of the
8 women, the females in the pornography that we've been -- that
9 we've obtained that you were exchanging with Mr. Bell are
10 pretty young looking, aren't they?

11 A I don't know how to respond to that except to say
12 I'd have to look at them. It's difficult to tell the age.

13 Q But you saw one of them, it says,
14 "Iloveteingirls.com." You had to be thinking these are pretty
15 young girls, right?

16 A That thought I hadn't thought of.

17 Q Okay. That would be inappropriate for you to be
18 looking at pornography involving underage girls, right?

19 A I would agree with that.

20 Q Let's take a look at this -- that this Lloyd Fernald
21 sent to you.

22 (Video played, not reported.)

23 Q (BY MR. CONWELL:) This is how you entertain
24 yourself in your big chair in your executive office at AAPS
25 headquarters?

1 MS. ROSSETTI: Objection. Argumentative.

2 THE COURT: Sustained.

3 Q (BY MR. CONWELL:) You received this video from
4 Lloyd Fernald, the public member, and you forwarded it on to
5 the director of government affairs, right?

6 A I believe I did. I don't see that specific e-mail
7 here, but --

8 Q Another -- another lapse in judgment, right?

9 A I said I made an error in judgment and it was
10 inappropriate, not --

11 Q We're going to see you made a lot of errors in
12 judgment, didn't you?

13 MS. ROSSETTI: Objection. Argumentative.

14 THE COURT: Sustained.

15 Q (BY MR. CONWELL:) The -- turn to page 107 to 112 in
16 that exhibit. I think it's on the same page -- yeah --

17 A 107 or 112?

18 Q You're right there, "Why a good bottle of wine costs
19 so much."

20 A Okay.

21 Q This is another pornographic e-mail sent to you by
22 Lloyd Fernald, and it shows, if you keep scrolling through, a
23 number of pictures of pornographic photographs. And you
24 received that and you also forwarded that on to the director of
25 government affairs, your subordinate; is that right?

1 A Correct.

2 Q So now each time that you got these, you're saying
3 that Mr. Bell came to your office and said -- just he happened
4 to be in there when you happened to be opening it and happened
5 to ask for it?

6 A No.

7 Q Is that the way it happened?

8 A Not every time, no.

9 Q Well, so each time this happened, did you call him
10 and say, "Hey, I got another one. Come look at this"?

11 A No, I did not.

12 Q How did you communicate to him that you had another
13 one so you would then forward it?

14 A On couple occasions he said, "Just send them to me
15 as you receive them."

16 Q Really? It was that regular?

17 A Excuse me?

18 Q It was that regular?

19 A I recall him making the statement, "Just send them
20 to me when you get them."

21 Q And you agreed to that?

22 A In cases, yes, I did.

23 Q There's some that you didn't send to him?

24 A I don't recall that.

25 Q Okay. Let's look at page 64 now. If you look at

1 the bottom of the page, there's an e-mail from Lloyd Fernald to
2 you, this one, October of 2009; is that right?

3 A Mine said October 7th.

4 Q Okay.

5 A 2009.

6 Q And what's the subject?

7 A "Holy shit."

8 Q Okay. Now, there's a lot of photographs after that
9 and they all say that -- have that caption on them, don't they?

10 Let's look at the first one. Is that correct?

11 A What's -- what do you mean what is correct?

12 Q That they all have that caption on them.

13 MR. CONWELL: Go ahead and scroll through those.

14 THE WITNESS: Yes, that is correct.

15 Q (BY MR. CONWELL:) Now, was this one of those that
16 he came and specifically said, "Send that to me," or is this
17 part of the standing order to Send me all this sort of stuff?

18 A I don't recall.

19 Q Okay. Now, Herb Pardell was a member of the Board
20 of Directors; is that right?

21 A At one time that's correct.

22 Q And we're going to see that Herb Pardell was on the
23 Board in June of 2012 and voted to expel Dr. Stewart; is that
24 right?

25 A Again, without seeing the minutes, I can't tell you

1 unequivocally that's correct, but I believe it is.

2 Q Okay. I understand. I'm happy to show that to you.

3 A Okay.

4 Q So let's take a look at page 19. Okay. If you go
5 to the bottom of the page, you'll see there's an e-mail from
6 Dr. Herbert Pardell sent to you on February 20, 2009, Friday,
7 February 20, 2009, at 10:38 in the morning. So we have nearly
8 a full year's period of time covered here already, don't we?

9 A Yes.

10 Q And your lapses in judgment went on the entire year?

11 MS. ROSSETTI: Objection. Argumentative.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 Q (BY MR. CONWELL:) Okay. And so now let's take a
15 look at what he sent to you. Where is he -- he's a doctor,
16 right? Physician?

17 A He's a physician.

18 Q Where?

19 A In Florida.

20 Q Okay. What kind of medicine does he practice?

21 A He's an internist.

22 Q A what?

23 A He is an internist.

24 Q Internist. What does that do -- what do they do?

25 A Internal medicine.

1 Q Can you give me an example of what they do?

2 A Oh, they're similar to family practitioner, family
3 member specialist, but they're more focussed on internal
4 infectious diseases, things of that nature.

5 Q Okay. Now, if we look here, page 21 -- scroll up
6 from there -- what is this a picture of?

7 A Somebody painting a body.

8 Q But more specifically what?

9 A More specific than what?

10 Q More specifically what? I'd like you to put it on
11 the record.

12 A Someone is painting a female body.

13 Q Her vagina?

14 A Yes.

15 Q And pubic area?

16 A Right.

17 Q And let's go two pages from there. Now he's doing
18 the backside?

19 A Correct.

20 Q And this goes on and on with these sorts of photos,
21 right?

22 A Yes, it does.

23 Q And you received that and you sent it on to
24 Mr. Bell?

25 A I believe I did.

1 Q So had he placed a standing order for all porno back
2 as early as February of 2009?

3 MS. ROSSETTI: Objection. Lacks foundation.

4 THE COURT: Overruled.

5 THE WITNESS: I can't give you the specific date
6 when he originally asked me or made a comment.

7 Q Well, why did you send it to him?

8 A It had to include his request. Whether it was
9 individual or a massive one like that, I don't recall.

10 Q Okay. Why didn't you ever -- when he asked it, you
11 know, I mean, he clearly was violating company policy by
12 talking to you about the pornographic material at the workplace
13 and by receiving these from you on his work computer at the
14 workplace, wasn't he?

15 A Yes.

16 Q And you were the CEO, right?

17 A Yes.

18 Q So you were supposed to terminate him, right?

19 A Uhm --

20 MS. ROSSETTI: Objection. Lacks foundation.

21 THE COURT: Overruled.

22 THE WITNESS: I wasn't -- what do you mean "supposed
23 to terminate him"?

24 Q (BY MR. CONWELL:) Well, he was violating the rules
25 of the company by doing this. It was your job to fire him?

1 A You could argue that, yes.

2 Q But, obviously, you did not, correct?

3 A I did not, no.

4 Q Now, Herb Pardell, he also sent you racist material.
5 Look at page 56. This is an e-mail you received from Herb
6 Pardell, Dr. Herb Pardell, on September 17, 2009, at 1:11 P.M.
7 which was a Thursday; is that right?

8 A Yes.

9 Q And it depicts several black African-American people
10 around someone who appears to be dressed as a Ku Klux Klan
11 member?

12 A Yes.

13 Q And you thought this was funny?

14 A No. I didn't make any comment.

15 Q Well, now this does not appear to be pornographic,
16 does it?

17 A I wouldn't say it is, no.

18 Q Well, why did you send this on to Mr. Bell since
19 it's not the pornography that he had a standing order that you
20 send to him?

21 A He had also requested any humor, jokes, things of
22 that nature.

23 Q Okay. And we're going to see quite a bit -- quite a
24 few more of these, several any of them, anyway -- I'm not going
25 to go through all of them -- but you received from doctors at

1 AAPS racist e-mails and you forwarded them on to the director
2 of government affairs, Timothy Bell; is that right?

3 MS. ROSSETTI: Objection. Lacks foundation.

4 THE COURT: Overruled.

5 THE WITNESS: I have to look at each one to tell you
6 whether I personally thought they were racist.

7 MR. CONWELL: Well --

8 THE WITNESS: If you're asking me about this one,
9 I'll be happy to respond.

10 Q (BY MR. CONWELL:) Yeah. The -- you've already
11 admitted -- we started this -- you've already admitted that all
12 these that we're looking at in this exhibit you received and
13 you forwarded on to Timothy Bell. So -- is that correct?
14 We've agreed on that, right?

15 A Would you repeat that statement, please?

16 Q We started out this -- this time together with you
17 looking at the request for admissions and admitting that what
18 you all had done is admitted that all of these photographs and
19 e-mails in this exhibit you received and you forwarded them on
20 to Mr. Bell. That's done. We don't have to do that again,
21 right?

22 A You're right. I agree.

23 Q So what you're saying is that you may or may not
24 agree that they're racist?

25 A I wouldn't characterize all of them that way without

1 seeing each one.

2 Q Okay. So, yeah, I want to show you some others and
3 give you that opportunity.

4 Now, Dr. Pardell sent you pictures of naked women at
5 least once a week, didn't he?

6 A I would have to go look at the record. Whatever the
7 record would show, I would agree to. But offhand --

8 Q You mean --

9 A -- I can't give you specifics sitting here today.

10 Q Well, would it help -- you want me refresh your
11 memory with what you said in your deposition?

12 A If I said that in a deposition couple years ago, I'm
13 just not recalling it sitting here at this time. So I
14 would --

15 Q Right --

16 A -- defer to my deposition as being accurate.

17 Q Yes. The deposition you gave in December of 2012,
18 okay.

19 And in that deposition, 2012, that was closer in
20 time to the events than we are today, right?

21 A Yes.

22 Q So your memory was better?

23 A It's been a couple years. My memory is not perfect.

24 THE COURT: Counsel?

25 (Sidebar conference:)

1 THE COURT: Okay. I briefly covered the way we do
2 impeachment by means of a depo. You ask the witness a
3 question, he gives you an answer.

4 See, "I direct the Court and counsel to this deposition
5 taken on blah, blah, blah, page No. 43, lines 13 through 15."
6 Give us a moment to find it and look at it.

7 If in response to the same question during his deposition
8 he gave a different answer, you can read it -- just read it and
9 move on.

10 MR. CONWELL: Right. I was just going to refresh
11 his memory as I'm impeaching him, showing him the testimony
12 from 2012.

13 THE COURT: Okay.

14 MR. CONWELL: It's closer in time to today. He said
15 he couldn't recall, so I was going to show him.

16 MS. ROSSETTI: It would help us to know what you're
17 looking at. We'd appreciate that.

18 MR. CONWELL: Page 182 of his deposition.

19 MS. ROSSETTI: But every time.

20 THE COURT: As a practical matter, he can show him
21 this (demonstrating).

22 MS. ROSSETTI: Uh-huh.

23 THE COURT: Does that refresh your recollection?
24 Maybe it does, maybe it doesn't. Okay. You can show him
25 anything. You can show him a baseball, all right? Okay.

1 (Open court in the presence of the jury.)

2 MR. CONWELL: I'm going to switch this for just a
3 second here.

4 Q (BY MR. CONWELL:) See on the screen this is from
5 your deposition page 182, (Reading:)

6 "How many times has Dr. Pardell sent you
7 pictures of women" --

8 MR. SCHNEIDER: Give us a page too, please.

9 MR. CONWELL: Page 182, line 13 on your screen.

10 MR. SCHNEIDER: I can't seen see the line number on
11 the screen.

12 MR. CONWELL: Oh, I'm sorry.

13 Q (BY MR. CONWELL:) (Reading:)

14 "How many times has Dr. Pardell sent you
15 pictures of women without their clothes
16 on?

17 "Frequently he did it. He doesn't do it
18 any more, but he used to.

19 "How frequently?

20 "Answer: Once a week sometimes."

21 Does that refresh your memory?

22 A Yes.

23 Q Now, Joseph Gallagher was on the Board also; is that
24 right?

25 A At one time he was.

1 Q Okay. And I think we'll see that he was on the
2 Board on June 13, 2012, but we'll come back to that.

3 A Okay.

4 Q Take a look at pages 136 to 139. Let's go to the
5 bottom of 136. This is an e-mail from Joseph Gallagher which
6 you then forwarded dated November 12, 2009, subject "The
7 Irishman in New York."

8 Do you recall this one?

9 A I didn't recall it by seeing this. I do, but prior
10 to this I wouldn't have recalled it.

11 Q Okay. Well, we covered it in your deposition.

12 A Right.

13 Q Do you remember that?

14 A Okay.

15 Q Okay. And then let's turn over to page 139. Now,
16 this --

17 A 139?

18 Q 139, just two pages later -- two or three pages
19 later.

20 A Okay.

21 Q This tries to say that it's funny when a black man
22 jumps to his death, doesn't it?

23 MS. ROSSETTI: Objection. Argumentative.

24 THE COURT: Sustained.

25 Q (BY MR. CONWELL:) Okay. Let's just read it. Would

1 you please read the joke on page 139?

2 A I'm going to read it from the screen. It's easier
3 for me to see it. (Reading:)

4 "Paddy was walking along the street during
5 his once-in-a-lifetime visit to New York
6 when he rounds the corner and there's a
7 rise -- high-rise building on fire.

8 Paddy, ever the kind-hearted and
9 resourceful Irishman, runs up to the
10 building to see if he can help and notices
11 people trapped five stories up.

12 Paddy yells to the people, 'I'm Patrick
13 Sean Michael Fitzpatrick, the Irish Rugby
14 Union fullback. If you jump, I'll catch
15 you.'

16 One lady in desperation jumps, and sure
17 enough, Paddy catches her. Then a man
18 sees that Paddy catches the women and
19 jumps. Sure enough, Paddy catches him
20 also.

21 The black man jumps out and crashes to the
22 sidewalk. Paddy didn't even attempt to
23 catch him. Paddy looks up and yells,
24 'Don't be throwin' out the fookin' burnt
25 ones.'"

1 Q Now, that was totally inappropriate for you to send
2 that to Mr. Bell, wasn't it?

3 A Absolutely.

4 Q And you knew when you sent that that you were
5 sending an outrageous racist e-mail, didn't you?

6 MS. ROSSETTI: Objection. Argumentative.

7 THE WITNESS: All right. Let's strike "outrageous."

8 Q (BY MR. CONWELL:) Okay. A racist e-mail, didn't
9 you?

10 A This was totally inappropriate.

11 Q No. I said you knew you were sending a racist
12 e-mail, didn't you?

13 A Oh, yes.

14 Q You agree this is a racist e-mail?

15 A I concur, yes.

16 Q You also sent out racist e-mails regarding
17 Hispanics, didn't you?

18 MS. ROSSETTI: Objection. Lacks foundation.

19 THE COURT: It's a question. Overruled.

20 THE WITNESS: I'd have to see them. If in my
21 deposition I attested to that fact, then I would agree that
22 that would be correct.

23 Q (BY MR. CONWELL:) Okay. Now, Mr. Gallagher also
24 sent you e-mails with sexual content, didn't he?

25 A I think he did, yes.

1 Q Excuse me. I said Mr. This is Dr. Gallagher.

2 Dr. Gallagher, what kind of doctor is he?

3 A Orthopedic surgeon.

4 Q Okay. These doctors, the family practices doctor,
5 the internist, the orthopedic surgeon, do they ask women to get
6 undressed in their practice?

7 A That's something I can't speak to with any accuracy.

8 Q Okay. Now, you also enjoyed and forwarded photos of
9 naked elderly women, didn't you? Not just young teens, but
10 also elderly women?

11 MS. ROSSETTI: Objection. Lacks foundation.

12 THE COURT: That should have been your last
13 objection to the last question. Sustained.

14 Q (BY MR. CONWELL:) Take a look at page 115. This is
15 one of the photos that you received from a doctor and forwarded
16 on to Mr. Bell; isn't that correct?

17 A Correct.

18 Q Take a look at page 123. Referring to the photo at
19 the bottom -- no, you went too far; that one right there --
20 that's a photo of an elderly woman barechested that you
21 received and forwarded to Mr. Bell? Yes?

22 A I don't see the exact e-mail here, but if it's -- if
23 I did, if it's in here, I would admit to that.

24 Q Okay. And take a look at 128.

25 A Okay. Okay.

1 Q This appears also to be a photograph of a naked
2 elderly woman; is that correct?

3 A I would agree with that, yes.

4 Q And you received that and forwarded it on to
5 Mr. Bell?

6 A I think I did, yes.

7 Q And you also received and forwarded sexually
8 explicit e-mails and photos related to children; is that right?

9 MS. ROSSETTI: Objection. Lacks foundation.

10 THE COURT: It's a question. Overruled.

11 THE WITNESS: I don't recall that.

12 Q (BY MR. CONWELL:) You don't recall it one way or
13 another?

14 A Children, I don't recall that.

15 Q Take a look at page 89.

16 A Okay.

17 MR. CONWELL: And if you can enlarge the one with
18 the big whatever that is, the yellow thing. Okay.

19 Q (BY MR. CONWELL:) You see that?

20 A Yes.

21 Q Now, can you read what that says?

22 A Yes.

23 MR. CONWELL: Can you enlarge that part?

24 Q (BY MR. CONWELL:) What's it say?

25 A "Crawl inside, children."

1 Q And above that what's it say?

2 A "Piku's vagina."

3 Q "Pikachu's vagina"?

4 A Correct.

5 Q Kind of like a play on words like kids would say
6 peekaboo?

7 A Yeah. I didn't think of that, but, yeah.

8 Q And it shows young children crawling into an area,
9 and an area that would be a vagina; is that right?

10 A Yes.

11 Q Now, the word "children" is misspelled? The H is
12 missing, right?

13 A Correct.

14 Q Now, in the sites that you look at and the sorts of
15 things that you look at, is that something that's done to avoid
16 detection by law enforcement, to misspell the word so that
17 their software won't find these things?

18 MS. ROSSETTI: Objection. Lacks foundation.

19 THE COURT: Sustained.

20 Q (BY MR. CONWELL:) Well, do you have any -- you
21 understood that it was saying "children," right?

22 A Yes.

23 Q And you thought this was okay to forward to
24 Mr. Bell?

25 A I didn't say that, no.

1 Q You knew it was extremely wrong and you did it
2 anyway?

3 MS. ROSSETTI: Objection. Argumentative.

4 THE COURT: Sustained.

5 Q (BY MR. CONWELL:) You forwarded it to Mr. Bell; is
6 that right?

7 A I did.

8 Q Now, you also received a video of an orgy called
9 "*Cheers*"; is that right?

10 A Correct.

11 Q And turn to page 36. Now, this -- you see these
12 series of e-mails, it says "Forward: *Cheers*, 4X, XXXXX"?

13 A Yes.

14 Q Was that some kind of a warning sign to you, or did
15 you view that as a signal to forward this on to people?

16 A Neither.

17 Q Okay. You thought it meant sexually explicit,
18 right?

19 A Yes.

20 Q And let's see what you forwarded on to Mr. Bell.
21 This is 214.3.

22 While he's pulling that up, do you recall the video?

23 A Yes, I do.

24 (Video played, not reported.)

25 Q (Inaudible.)

1 THE REPORTER: I can't hear you.

2 THE WITNESS: Excuse me?

3 MR. CONWELL: Withdraw the question.

4 (Video played, not reported.)

5 Q (BY MR. CONWELL:) Mr. Carbone, what were you
6 thinking when you sent that video to the director of government
7 affairs in your office?

8 A Well, I would say I wasn't thinking appropriately.
9 I will tell you that I do not recall viewing it before sending
10 it, but at the previous deposition when I saw it, I did
11 recognize it, so -- and the e-mails show that I sent, it so I
12 admit to that. But totally, totally completely an error in
13 judgment and I'm sorry I did that.

14 Q Your computer desk there's -- you've been in the
15 courtroom, you've heard the testimony -- your screen faces the
16 door so the people walking by your office can see your computer
17 screen, and you, in fact, said so in your deposition. Do you
18 recall that?

19 A At one time the office desk -- my desk was set up
20 that that was correct, yes.

21 Q So that people walking by would be exposed to your
22 pornography, correct?

23 A People walking into my office behind me.

24 Q Okay. Now, this doctor who sent you the *Cheers*
25 video also sent you -- can you turn to page 17?

1 A I'm there.

2 Q He also sent you some pretty explicit photographs,
3 women with their private parts exposed; is that right?

4 A Yes.

5 Q And you forwarded that on, too?

6 A Yes, I did.

7 Q Now, we -- we did talk in your deposition about you
8 sending e-mails that made fun of Hispanics. Do you need me to
9 refresh your memory or do you remember testifying to that?

10 A If it was in testimony, then -- and I concurred with
11 it, there's no need to reiterate it.

12 Q It sounds like something you would do, doesn't it?

13 MS. ROSSETTI: Objection. Argumentative.

14 THE COURT: Sustained.

15 Q (BY MR. CONWELL:) That's why you're comfortable in
16 saying that you sent it; is that right?

17 MS. ROSSETTI: Objection. Argumentative.

18 THE COURT: Misstates the testimony.

19 THE WITNESS: Do I answer that?

20 THE COURT: He's going to ask another question.

21 THE WITNESS: I can't --

22 MR. CONWELL: I'm going to ask another question.

23 Q (BY MR. CONWELL:) You didn't think that sending e
24 e-mails that made fun of Hispanics was appropriate either, did
25 you?

1 A Would you repeat that, please?

2 Q You don't think it's appropriate to forward e-mails
3 that make fun of Hispanics, do you?

4 A I agree.

5 Q Now, at the time of your deposition in December of
6 2012, you had a different view regarding whether or not this
7 was appropriate than you do today; isn't that true?

8 A I truly don't recall. I may have.

9 Q This is page 183, lines 20 through 25. Tell me if
10 this refreshes your memory. We had been going through this
11 pornography and I asked you, "When Tim Bell asked you to
12 forward these e-mails to him, you did so?"

13 And you answered, "Yes."

14 And I ask, "Why did you do so?"

15 And you said, "It was an interoffice issue. He was
16 one of our staff, so I didn't see an issue with it."

17 Does that refresh your memory?

18 A Yes, it does.

19 Q You don't think that it's inappropriate to forward
20 e-mails such as the pornograph- -- pornography that we've seen
21 to staff if they ask you for it; is that right?

22 A I did not say that.

23 Q Show you your deposition page 184, lines 9 through
24 12.

25 We were talking about the pornography and the racist

1 e-mails --

2 A Right.

3 Q -- and I said, "You think it's okay" --

4 THE COURT: Hang on. Hang on. Hang on. Hang on.

5 MR. CONWELL: I'm going to work towards line 12,
6 your Honor.

7 THE COURT: Uh-huh. I'm taking a look at your
8 question here.

9 Any objection?

10 MR. SCHNEIDER: Can I get the previous question
11 back, please?

12 THE COURT: Okay.

13 MR. CONWELL: I can re-ask it, your Honor.

14 THE COURT: No. No, no, no, no. Doesn't work that
15 way.

16 MR. CONWELL: Okay.

17 THE COURT: The previous question was: "You don't
18 think it's appropriate to forward e-mails that make fun of
19 Hispanics, do you?"

20 And he says, "I agree."

21 MR. CONWELL: No --

22 THE COURT: And the next question is, "Now at the
23 time of your deposition in December of 2012, you had a
24 different view regarding whether or not this was appropriate
25 than you do today; isn't that true?"

1 And then he says, "I don't recall."

2 It's difficult to impeach, "I don't recall."

3 MR. CONWELL: That's not the preceding question,
4 your Honor.

5 THE COURT: Okay.

6 MR. CONWELL: That's like four questions ago. I
7 could re-ask it, if the Court would like me to do so.

8 THE COURT: Sure. Go ahead.

9 Q (BY MR. CONWELL:) (Reading:)

10 "You think it's okay for" --

11 MS. ROSSETTI: Objection, your Honor. This -- the
12 questions don't match up. It misstates the testimony.

13 THE COURT: He said he's going to restate the
14 question.

15 MS. ROSSETTI: Oh, sorry. Thank you.

16 Q (BY MR. CONWELL:) (Reading:)

17 "You think it's okay or appropriate for
18 you to forward such e-mails to an AAPS
19 staff member if they make the request?"

20 MS. ROSSETTI: Objection. Vague.

21 THE COURT: Overruled.

22 THE WITNESS: I don't think it's appropriate.

23 Q (BY MR. CONWELL:) Okay. In your deposition on
24 page 184, lines 9 through 12, do you recall me asking this
25 question and you giving this answer --

1 THE COURT: No, no.

2 MR. CONWELL: (Reading:)

3 "You think it's okay" --

4 THE COURT: No, no. Just read the answer. Read the
5 question, read the answer.

6 Q (BY MR. CONWELL:) Yes. (Reading:)

7 "You think it's okay or appropriate for

8 you to forward such e-mails to an AAPS

9 staff member if they make the request?"

10 And your answer was, " I don't think it's
11 inappropriate."

12 Do you recall that?

13 A Yes. After seeing this I do.

14 Q You have admitted to exposing Cassandra Newby to at
15 least one photograph with -- of a woman with large bare breasts
16 with her genitals and back sides exposed; is that correct?

17 A I opened an e-mail and she was standing behind my --
18 behind me and I didn't know she was there and I didn't know
19 what was on the e-mail as I was opening it.

20 Q And you deny what she said, that you exposed her to
21 a lot more than that; is that correct?

22 A No, it is not correct.

23 Q I'm saying you dispute what she says, right?

24 A Absolutely.

25 Q Okay. Now, when your pornographic activities were

1 exposed, you were not fired, were you?

2 MS. ROSSETTI: Objection. Argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: No, I was not.

5 Q (BY MR. CONWELL:) Nor did you resign, did you?

6 A No, I did not.

7 Q But you testified that you fired Cassandra Newby --
8 or, I'm sorry -- you haven't testified to this -- you told me
9 in your deposition that you fired Cassandra Newby because she
10 pushed another woman into a file cabinet; is that right?

11 A I terminated her for assaulting an employee.

12 Q Do you recall testifying that she pushed another
13 woman into a file cabinet?

14 A I may have very well made that statement, yes.

15 Q Would you like to look at your testimony -- your
16 deposition testimony to refresh your memory?

17 A If I had said that and it's in the testimony, then I
18 would accept that as fact.

19 MR. CONWELL: Okay. May I approach the witness,
20 your Honor, and show him the testimony?

21 THE COURT: This is a waste of time. He said he may
22 very well have made that statement, so what are we doing?

23 MR. CONWELL: I'll move on then.

24 THE COURT: All right.

25 Q (BY MR. CONWELL:) You also testified that Ms. Newby

1 then turned around and smirked; is that correct? Will you
2 adopt that testimony as well?

3 A I believe so, yes.

4 Q And you also testified that you have this on
5 surveillance video; is that right?

6 A Yes.

7 Q And then you produced that surveillance video to us,
8 right?

9 A Someone did, yes.

10 Q Okay. Let's take a look at Exhibit 1093 and tell me
11 if this is that surveillance video.

12 (Exhibit 1093.2 previously marked for identification.)

13 MR. CONWELL: Can you go ahead and play that?

14 THE COURT: Let's take a break right now. Is 1093 a
15 DVD?

16 MR. CONWELL: It's like a 30- to 45-second video
17 clip.

18 THE COURT: Okay.

19 MR. CONWELL: We would appreciate the break 'cause
20 we're having trouble pulling it up.

21 THE COURT: Okay. Good.

22 Ladies and gentlemen, remember the admonition. We're
23 going to take about ten minutes, all right?

24 THE COURTROOM DEPUTY: All rise.

25 (A recess was taken.)

1 (Open court in the presence of the jury.)

2 THE COURT: All right. Counsel and the parties are
3 present. The jury has returned. Mr. Carbone has resumed his
4 place in the witness chair.

5 All right, counsel, you may continue.

6 MR. CONWELL: Thank you, your Honor. And we're
7 showing 1093.2, which is the surveillance video that was
8 furnished to us. Just --

9 (Video played, not reported.)

10 MR. CONWELL: I want to play that again. It
11 happened so quickly.

12 Q (BY MR. CONWELL:) Who's coming towards who?
13 Mr. Carbone, the one approaching us, who is that?

14 A Well, there's two people there.

15 Q The one walking towards us, who is that?

16 A That's one of the employees, Debra Comorgan, and the
17 the other is Cassandra Newby walking away from us.

18 Q So Cassandra Newby is the smaller of the two people?

19 A I don't know if smaller, but she's in the turquoise
20 or blue top with short hair.

21 Q Okay. Right. And this is what you described as hip
22 checking the larger of the two women into the filing cabinet?

23 A Yes.

24 Q And then -- and that, that right there, is what led
25 you to firing Cassandra Newby?

1 A Yes.

2 Q Now, you had been sending pictures of women without
3 their clothes on from your AAPS computer for two to
4 three years, and you neither resigned nor were fired; is that
5 right?

6 A Excuse me. The end part of that?

7 Q You had been sending pictures of women without their
8 clothes on to people for two to three years with your AAPS
9 computer and you were never fired, right?

10 A That's correct.

11 Q Although the employee handbook says it's grounds for
12 immediate termination, right?

13 A Won't argue with that.

14 Q Okay. Thank you.

15 And yet Cassandra Newby runs into this woman or they
16 have this whatever encounter, that's grounds for termination?

17 A My opinion is that she was assaulted.

18 Q Really?

19 A Really.

20 Q Okay. You heard her testify that she had just been
21 diagnosed with diabetes, didn't you?

22 A Yes.

23 Q That her blood sugars were 600?

24 A I think that was correct. They were high, yes,
25 yeah.

1 Q Normal is 100?

2 MS. ROSSETTI: Objection. Calls for an expert
3 testimony.

4 THE COURT: Sustained.

5 MR. CONWELL: You heard her testimony that normal --

6 THE COURT: Hang on. Hang on. Hang on. Sustained.

7 Q (BY MR. CONWELL:) You heard her testify that normal
8 was 100?

9 A I believe so, yes.

10 Q You can't even walk straight when your blood sugar
11 is 600, can you?

12 MS. ROSSETTI: Objection. Calls for expert
13 testimony.

14 THE COURT: Sustained.

15 Q (BY MR. CONWELL:) Instead of -- you know what?
16 Excuse me. Now, the story you told us today about Tim Bell
17 making a one-time request or maybe two-time request of you as
18 opposed to coming into your office and occasionally seeing
19 these e-mails, it wasn't true? What you just told us is not
20 true, is it?

21 MS. ROSSETTI: Objection. Argumentative.

22 THE COURT: And confusing. Would you rephrase that?

23 MR. CONWELL: Yes, your Honor. I don't want it to
24 be confusing.

25 Q (BY MR. CONWELL:) The the testimony that you've

1 given us that the way -- the reason you were sending these to
2 Mr. Bell was 'cause he made a one-time request, or I think you
3 said maybe two times he asked, "Just anything you get like
4 this, just send it on to me," that testimony's not true, is it?

5 A No, it is correct.

6 Q Well, that's not what you told the Board of
7 Directors, is it?

8 A That I don't recall.

9 MR. CONWELL: Take a look at Exhibit 12?

10 (Exhibit 12 previously marked for identification 1801

11 MR. CONWELL: I'm sorry I went out of order. I
12 changed the order of the exhibits.

13 Q (BY MR. CONWELL:) Okay. You recognize this don't
14 you?

15 A It's a newsletter from AAPS, yes.

16 Q Right. This was sent out on June 24, 2011, right?

17 A Yes.

18 Q Now, that was during the annual meeting at Tysons
19 Corner, wasn't it?

20 A Yes.

21 Q The annual meeting at Tysons Corner?

22 A I would say yes, correct.

23 Q And someone had sent out a 14-point letter making
24 certain statements regarding a number of issues, and
25 particularly regarding you distributing pornography; is that

1 right?

2 A I believe that's correct, yes.

3 Q And so this was in connection with this debate that
4 was going to be happening regarding whether or not the House of
5 Delegates would adopt a -- this amendment that we heard
6 described in other testimony as giving these super powers to
7 the Executive Committee?

8 A Yes, I do.

9 Q Can you speak in the microphone?

10 A My answer is yes, I do recall it.

11 Q Thank you.

12 And so this was the official response to the
13 statements in that 14-point letter that had been sent to those
14 delegates, isn't it?

15 A I would have to read this and read the 14 points to
16 tell you specifically this was the response.

17 Q It says, "Dear members," on the first page, "Thank
18 you to all those that participated in the Board of Directors
19 meeting on June 23, 2011, at the Ritz-Carlton in Tysons Corner,
20 Virginia, and thank you to all of our members for their
21 continued support, many, unfortunately, who were unable to join
22 us at this year's annual meeting."

23 You see that?

24 A Yes, I do.

25 Q And then it goes on, and the third paragraph and it

1 says, "An anonymous communication was brought forth not only at
2 the June 23, 2011, Board of Directors' meeting, but was sent
3 out broadly to our members as well. These concerns and issues
4 were brought forth at the meeting and addressed broadly by
5 myself, and the Board responded in an as transparent manner as
6 possible. Please understand that certain matters could not be
7 elaborated ongoing" -- excuse me -- "elaborated upon as ongoing
8 litigation does not allow us to do so, even though this goes
9 against our greatest wishes."

10 Do you see that?

11 A Yes, I do.

12 Q And then what follows here are statements by the
13 members to Save AAPS, as we can see at the bottom of the page,
14 and then the next page, the Board of Directors' Response to All
15 Concerns and Allegations. See that?

16 A Yes.

17 Q And so I'm not going to go through each of these.
18 Many of them have been gone through already.

19 What I would like to direct you to is the bottom of
20 page 003. It's 12-003. And specifically Item No. 6. It says
21 that, "The CEO of our organization was accused of distributing
22 pornography via company e-mail ."

23 You see that?

24 A Yes.

25 Q That was the same statement that had been made to

1 Save AAPS.

2 And then after that is the AAPS Board of Directors'
3 response. Do you see that?

4 A Yes.

5 Q And let's look at your response.

6 MS. ROSSETTI: Objection. Lacks foundation.

7 THE COURT: Sustained.

8 MR. CONWELL: Your Honor, this is already in
9 evidence -- let's look at the response of the Board of
10 Directors. This is already in evidence, your Honor.

11 Q (BY MR. CONWELL:) (Reading:)

12 "Bill Carbone occasionally receives
13 off-color and questionable e-mails. Tim
14 Bell more than one occasion saw these
15 e-mails" -- here's the key part -- "by
16 walking into Bill's office on his own
17 accord. Bell then requested that Bill
18 forward it to him. Please, we request
19 that do you not forward any distasteful
20 e-mails to anyone at AAPS, no matter how
21 funny you think they are."

22 That's the representation that was made by the Board of
23 Directors to the members, isn't it?

24 A It -- yes.

25 Q Okay. You didn't -- or the Board of Directors did

1 not tell the members that Mr. Bell had made a one-time or
2 two-time request for you to forward any racist or pornography
3 e-mail -- pornographic e-mails that you get, does it?

4 A The Board did not, did you say?

5 Q Right. It didn't do that? The thing you told us
6 this morning, the Board didn't do that in its communications to
7 the members?

8 A Repeat the question again, please.

9 Q The things you told us this morning about how this
10 happened is not consistent with what the Board told the
11 members, is it? It's not the same?

12 A I don't see the inconsistency.

13 Q You don't. Okay.

14 So it doesn't say anywhere here that you were
15 getting and forwarding hardcore pornography like the *Cheers*
16 video that was just shown, does it?

17 A No, it does not.

18 Q Instead, it calls it "off-color and questionable,"
19 doesn't it?

20 A That's what I read, correct.

21 Q Can we at least agree that the video in the
22 photographs we've been seeing are far worse than just
23 off-color?

24 A Agreed.

25 Q Did you not tell the Board that you were getting

1 hardcore pornography and forwarding that, or did you tell them
2 and they failed to disclose it?

3 A Neither. I told them and whether they disclosed it
4 or not wasn't my discretion. It wasn't my purview. I didn't
5 write this.

6 Q So you did tell the Board of Directors that you were
7 getting and forwarding hardcore pornography?

8 A All types, yes.

9 Q Okay. When did you do that?

10 A I don't recall. Soon after it was made evident, but
11 I can't give you a specific date.

12 Q When was it made evident?

13 A Can't recall specifically.

14 Q Was it when Tom Castillo went to Dr. McCann in
15 August 2010 and said that there's been a report that our CEO is
16 receiving and forwarding pornography in the workplace?

17 A As I said, I don't recall specifically when.

18 Q Okay. You think it was after he did that?

19 A As I said, I can't specifically recall. It was
20 after, but I can't give you any date or timeline.

21 Q Okay. Was it -- did you disclose that to the Board
22 before they suspended Dr. Castillo, Geller, and Klein without a
23 hearing?

24 A I don't recall.

25 Q Did you feel any obligation to disclose that to the

1 Board knowing -- well, first you knew that they were suspending
2 Dr. Castillo, Geller, and Klein. We covered that extensively
3 in your deposition, right?

4 A I didn't know that was inevitable.

5 Q You knew that they did it, right?

6 A I knew they were considering that.

7 Q And in fact, you were at the Board meeting on
8 September 30, 2010, when there were discussions regarding these
9 topics; is that correct?

10 A You know, I don't recall being there.

11 Q Okay. I'll come to the Board meeting minutes in a
12 minute.

13 A Okay.

14 Q Minutes in a minute.

15 A Okay.

16 Q So in any event, did you feel any sense of
17 obligation or duty to Drs. Castillo, Keller, and Klein to
18 disclose to the Board that these three doctors were being --
19 excuse me -- disclose what you had done before these three
20 doctors were suspended?

21 A I hadn't considered that issue.

22 Q Okay. But you knew that Dr. Castillo had -- was
23 calling for an investigation of "alleged conduct by our CEO
24 Bill Carbone and receiving and distributing pornography in the
25 workplace," right?

1 A I knew he was calling for an investigation. I
2 didn't know the specifics.

3 Q You didn't know it had anything to do with you?

4 A I didn't say that. I said I just didn't know all
5 the specifics, what he was specifically calling for. I knew it
6 had to -- to deal with me, yes.

7 Q You knew it had to do with you allegedly
8 distributing pornography?

9 A Something in general to that, yes.

10 Q Okay. So knowing that, you did not make the
11 disclosure or you did?

12 A I did or did not make a disclosure, would you
13 complete the sentence or the question?

14 Q Let me rephrase. Maybe it was confusing.

15 A Okay.

16 Q Knowing that Dr. Castillo, Geller, and Klein were
17 calling for an investigation into a number of things including
18 whether you were distributing pornography in the workplace, you
19 did not disclose that you, in fact, were distributing
20 pornography in the workplace; is that right?

21 A I did disclose that, yes.

22 Q You did. Before they were suspended?

23 A I'm not sure of that.

24 Q Is it your memory that they were suspended from the
25 organization for engaging in conduct injurious to the best

1 interests of the AAPS after you had disclosed that the
2 allegations were true?

3 A I believe that I disclosed it to the Board members
4 before a decision was made.

5 Q So --

6 A Before the Board reached a decision.

7 Q So the chronology is they called for an
8 investigation in August of 2010 into whether you were
9 distributing pornography in the workplace. You then disclosed
10 to the Board that you were distributing pornography in the
11 workplace, and then the Board suspended Drs. Castillo, Geller,
12 and Klein for conduct injurious to the best interests of AAPS?
13 Is that really your testimony?

14 MS. ROSSETTI: Objection. Argumentative.

15 Q (BY MR. CONWELL:) Is that your testimony?

16 A Should I answer the question?

17 THE COURT: Yes.

18 THE WITNESS: I believe so, yes. That's --

19 Q (BY MR. CONWELL:) What was injurious -- what was
20 causing injury to the AAPS by Dr. Castillo, Geller, and Klein
21 requesting an investigation into allegations that you knew to
22 be true?

23 MS. ROSSETTI: Objection. Lacks foundation.

24 THE COURT: Overruled.

25 THE WITNESS: There were other issues I understood

1 to be under consideration by the Board.

2 Q (BY MR. CONWELL:) Like the Federal Election
3 Commission issue?

4 A No.

5 Q The ACCME probation issue?

6 A No.

7 Q The payment of money to Bob Cerrato by the AAPS?

8 A No.

9 Q Were you -- did you participate in the decision to
10 suspend Drs. Castillo, Geller, and Klein?

11 A No.

12 Q Let me come back to this.

13 AAPS sued -- I'm sorry. I'm sorry. I lost my place
14 here.

15 So instead of firing you when you disclosed that you
16 were disseminating pornography in the workplace, you were given
17 a pay raise; is that right?

18 A I would have to look at the record to verify that.

19 Q Well, take a look -- well, how much do you make now?

20 A Over a little over \$250,000.

21 Q Per year?

22 A Correct.

23 MR. CONWELL: Okay. And now, take a look at
24 Exhibit 1801.

25 (Exhibit 1801 previously marked for identification.)

1 Q You recall this, don't you, the tax return or the
2 return of organization exempt from income tax for 2010?

3 A We submit one annually. I'm not recalling this
4 specifically, but I've got it in front of me so --

5 Q I think we covered this in your deposition.

6 But in any event if you --

7 MS. ROSSETTI: Objection, your Honor. All of these
8 numbers in this document were supposed to be redacted per
9 agreement of counsel and the ruling of the Court.

10 MR. CONWELL: I'm just going to ask him about his
11 salary in 2010.

12 THE COURT: Go ahead. Go.

13 Q (BY MR. CONWELL:) Can you take a look at page 8?
14 Do you see your salary in 2010?

15 A Correct. Yes, I do.

16 Q And what was it?

17 A 223,270, if I'm reading it correctly.

18 Q So at the time the allegations were made, you were
19 making 223,000, and now you're making over 250,000; is that
20 right?

21 MS. ROSSETTI: Objection. Misstates testimony.

22 THE COURT: Overruled.

23 THE WITNESS: As I said, yes.

24 Q (BY MR. CONWELL:) Okay. Take a look at
25 Exhibit 1767.

1 (Exhibit 1767 previously marked for identification.)

2 MR. CONWELL: Don't put it up yet.

3 Q (BY MR. CONWELL:) Now, is that the same type of
4 document for the year 2013?

5 A Yes, it is.

6 Q Okay. And turn to page 23.

7 A 23?

8 Q Yes, sir.

9 A Okay.

10 Q So by 2013, what had your salary been increased to?

11 A 257,990, it looks like.

12 Q I'm sorry. Could you speak --

13 A 257,990.

14 Q Okay. So you'd received a pay raise from the time
15 you had made this disclosure to the Board of your distribution
16 of pornography to 2013 of \$34,000, approximately?

17 A If this is what -- this is what -- this is what the
18 facts show, yes, I won't dispute that. Yes.

19 Q Okay. Thank you for not disputing the facts.

20 Now, Tim Bell, you -- AAPS sued Tim Bell; is that
21 right?

22 A That's correct.

23 Q He brought some kind of a complaint with the City of
24 Tampa for employment-related charges against AAPS; is that
25 right?

1 A Correct.

2 Q He never filed a lawsuit against AAPS, did he?

3 A I know there was an EEOC complaint, one or two. I'm
4 not sure if there was an actual lawsuit. I don't think so.

5 Q And then you sued him -- AAPS sued him, excuse me,
6 on October 1, 2012; is that right?

7 A I know we sued him. I can't tell you the specific
8 date.

9 Q Okay. It was after September 30th of -- it was
10 after September -- I used the wrong date, didn't I? I said
11 2012.

12 Here. Let's just go to an exhibit. Let's go to
13 Exhibit 1405.

14 (Exhibit 1405 previously marked for identification.)

15 A Okay.

16 Q (BY MR. CONWELL:) Those are the minutes of the
17 Board for the Board meeting on September 30th of 2010; is that
18 right?

19 A Yes. Yes.

20 Q Thank you.

21 And so if you look at the bottom of the page, it
22 says, "The confidential discussion concerned the inappropriate
23 and fraudulent actions taken by a former AAPS employee,
24 Mr. Timothy Bell. All questions by Board members were
25 answered. Subsequently, a motion was made by Dr. McCann to

1 immediately proceed with filing a lawsuit and injunction
2 against Mr. Bell. The motion was seconded by Dr. Cerrato. The
3 vote passed unanimously."

4 Do you see that?

5 A Yes.

6 Q And so this was some two months after Dr. Castillo
7 had gone to Dr. McCann, as we saw during his testimony, calling
8 for an investigation; is that right?

9 A I believe you're correct, yes.

10 Q So you would agree that the alleged -- that the
11 discussions that led up to Mr. Castillo going to Dr. McCann --
12 excuse me -- the discussions between Dr. Castillo and
13 Dr. Bell preceded the lawsuit that AAPS filed against Mr. Bell,
14 right?

15 A Please repeat that.

16 Q It was complicated. I'm sorry.

17 A Would you please repeat it?

18 Q I will.

19 A Okay.

20 Q I'm not going to repeat it. I'll rephrase it so
21 we're clear.

22 A That's fine.

23 Q So you sued Mr. Bell after September 30, 2010,
24 right?

25 A According to this, correct, yes.

1 Q And you heard Dr. Castillo's testimony that before
2 August of 2010, he got information from Mr. Bell that led him
3 to go to Dr. McCann and call for an investigation, right?

4 A Correct.

5 Q So those communications between Dr. Castillo and
6 Mr. Bell were far before you sued Mr. Bell, correct?

7 A I believe they were prior to the Board making that
8 decision. I don't know exactly the date that the lawsuit was
9 filed. My answer would be I believe you're correct.

10 Q Okay. While we're here, the Board sent -- you heard
11 the testimony that the Board suspended Drs. Castillo, Geller,
12 and Klein in the first week of October of 2010. Do you recall
13 that?

14 A I believe you're correct, but I'm not certain.

15 Q Okay. I don't think there's any dispute in the case
16 that that's when they were suspended --

17 A Okay.

18 Q -- first week of October 2010.

19 Now, looking at September 30th --

20 MS. ROSSETTI: Objection, your Honor. Objection,
21 your Honor. Mr. Conwell is testifying.

22 THE COURT: Overruled.

23 Q (BY MR. CONWELL:) Look at the September 30 minutes
24 for 2010. Now, do you see anything there where the Board
25 approves suspending Drs. Castillo, Geller, and Klein?

1 A No, I do not.

2 Q Okay. Now, let's -- let's jump over and look at the
3 Board minutes for November 6, 2010, which is Exhibit 1413.

4 (Exhibit 1413 previously marked for identification.)

5 THE COURTROOM DEPUTY: The exhibit again, counsel?

6 MR. CONWELL: 1413.

7 THE COURTROOM DEPUTY: Okay.

8 THE WITNESS: Thank you.

9 Q (BY MR. CONWELL:) Have you found it?

10 A Yes.

11 Q And there's nothing in these minutes either that
12 whereby the Board approves suspending Drs. Castillo, Geller,
13 and Klein, is there?

14 A I'd have to read it. Would you please repeat the
15 question for me so I'm clear?

16 Q Yes. First, if you go to page 1, I just want to
17 establish you were at that meeting, right?

18 A Yes.

19 Q First page? Okay.

20 And the question was there's -- there's nothing in
21 these minutes that show that the Board of Directors voted to
22 suspend Drs. Castillo, Geller, and Klein at this meeting,
23 correct?

24 A I see it. Nothing in here, yes.

25 Q Okay. So it didn't happen in September and it

1 didn't happen in November, right? Right?

2 A Well, it didn't happen --

3 MS. ROSSETTI: Objection. Lacks foundation.

4 THE COURT: Overruled.

5 THE WITNESS: It didn't happen November 6th.

6 MR. CONWELL: Okay.

7 THE WITNESS: I don't know about the entire month,
8 but it didn't happen November 6th, according to these minutes.

9 Q (BY MR. CONWELL:) All right. If you look on the
10 first page of this document, it says, "Approval of minutes, Dr.
11 Measures' motion to approve the September 30, 2010,
12 September 3rd, 2010, and June 10, 2010, minutes."

13 Do you see that?

14 A Yes, I do, yes.

15 Q Those had been all the Board meetings prior to
16 November 6, 2010; is that right? From June 10th up to
17 November 6th, those are the three Board meetings that had
18 occurred; is that right?

19 A Based on this, I would agree with that.

20 Q Sir, you're not aware -- or are you aware of any
21 Board minutes, minutes of the Board of Directors of AAPS that
22 approved suspending Drs. Castillo, Geller, and Klein?

23 A I would have to review all the minutes of that
24 period to be able to answer that accurately.

25 Q Okay. Well, I -- I -- I would like to see if there

1 is such a set of minutes. If you have them, I'd like to see
2 them. Have you done that?

3 A Have I gone through all the minutes?

4 Q Right.

5 A No, I have not.

6 Q Okay. Do you have any memory of such minutes?

7 A Offhand, no. There were so many meetings that were
8 convening, I do not recall specifically.

9 Q Okay. Now, if you look at the minutes here for
10 November 6, 2010, it identifies the Board members, doesn't it?

11 A It -- in terms of being their names?

12 Q Yes. Right.

13 A And attendance or not in attendance?

14 Q Yes.

15 A Yes.

16 Q Now, if you look in the right-hand column, those who
17 were absent, he's a Board member, but he's just not there on
18 the meeting -- at that meeting is your porn buddy Herb Pardell.
19 Do you see that?

20 MS. ROSSETTI: Objection. Argumentative.

21 THE COURT: Sustained.

22 Q (BY MR. CONWELL:) Herb Pardell was the guy that you
23 said was sending you pornographic e-mails once a week, right?

24 A Frequently, and it could have been weekly, yes.

25 Q Okay. Stephen Montes was there, right? He was on

1 the Board?

2 A His name is here, yes.

3 Q Okay. Dr. Cerrato also?

4 A I see his name as well, yes.

5 Q Go to page 2 at the center of the page. It says,
6 "Dr. Cerrato reviewed the six-month suspension of the three
7 AAPS/ABPS Board members as these members have been implicated
8 in the *AAPS vs. Bell* complaint as co-conspirators with
9 Mr. Bell, and their activities are a violation of AAPS Bylaws
10 Section 3.05, discipline."

11 See that?

12 A Yes.

13 Q Dr. Cerrato reported that?

14 A According to these minutes, yes.

15 Q And in fact, in your complaint against Mr. Bell,
16 AAPS alleged that Mr. Bell conspired with Drs. Castillo,
17 Geller, and Klein to, quote, "portray the CEO in a false light
18 by contacting public members of the organization and
19 distributing pornographic e-mails to them."

20 Do you recall that?

21 A What was -- where are you reading from?

22 Q I'm reading from your deposition.

23 A Okay. Yes.

24 Q Okay. So after Dr. Castillo brings to the attention
25 of the Board and Dr. McCann these allegations that you were in

1 fact distributing pornographic e-mails, AAPS turns around and
2 alleges in a publicly-filed complaint that Drs. Castillo,
3 Geller, and Klein were conspireing with Bell to distribute
4 pornographic e-mails, right?

5 A If that's what the minutes state, I would concur
6 with what's written.

7 Q That's what you said.

8 A Okay. I would concur with what I said, too.

9 Q But you had no evidence at all that Drs. Castillo,
10 Geller, and Klein were conspireing with Timothy Bell to
11 distribute pornography, did you?

12 A I don't believe I did.

13 Q And there's nothing false about anyone portraying
14 you as someone distributing pornography because that's what you
15 were doing; is that right?

16 A I was doing that, correct.

17 Q So there's nothing false about the allegation in the
18 Bell complaint that -- that you were being portrayed as someone
19 distributing pornography, right?

20 A I would agree with that also.

21 Q That would be a true allegation?

22 A Yes.

23 Q Now, in the Board minutes on November 6, 2010 -- if
24 I'm looking at the right ones -- -- oh, I'm on the wrong ones.

25 Can you look at Exhibit 1457?

1 (Exhibit 1457 previously marked for identification.)

2 Q (BY MR. CONWELL:) And you have that?

3 A Yes, I do.

4 Q Now, this is a year later, right?

5 A Yes -- oh, yes.

6 Q And so you were present at this Board meeting as
7 well, right?

8 A Yes.

9 Q Okay. And so at this point this lawsuit with
10 Mr. Bell has not yet been resolved; is that right?

11 A I believe it has not been, correct.

12 Q And if you'd look at the bottom of the page under
13 Report of Officers, the very last line, it says, "Dr. Cerrato
14 noted that the default judgment against Mr. Bell will be
15 proceeding."

16 Do you see that

17 A Yes, I do -- yes.

18 Q And it was in fact true that there was no trial in
19 that case, right? You obtained a judgment without a trial?

20 A Yes.

21 Q 'Cause Mr. Bell did not defend it, correct?

22 A He did not what?

23 Q Defend.

24 A There was no trial.

25 Q Right. He allowed a judgment to be entered against

1 him. He'd moved to another state at this point, hadn't he?

2 A I don't know where he went.

3 Q And then AAPS submitted affidavits primarily for
4 attorneys' fees and administrative time for Mr. Durante that
5 somehow totaled \$180,000 and submitted that to the Court; is
6 that right?

7 A We submitted expenses.

8 Q Right. And then you obtained a judgment with no
9 fight whatsoever from Mr. Bell for \$180,000 against him; is
10 that right?

11 A What was your statement again, please?

12 Q I say then you submitted these expenses for \$180,000
13 and you obtained a judgment against Mr. Bell with no fight by
14 him at all; is that right?

15 A No fight by him did you say?

16 Q No defense. It was a default judgment.

17 A We filed a judgment. It was up to him to react and
18 respond.

19 Q And he did not?

20 A That's his choice.

21 Q I'm just saying he did not; is that right?

22 A To my understanding, you're correct, he did not.

23 Q Okay. Do you know if he even got the affidavit of
24 costs? Do you know if he even received that?

25 A I don't recall.

1 Q Yet, Tony Russo told the members that he was found
2 guilty by a court, right? That's what Tony Russo was telling
3 the members?

4 A I don't remember that specific statement.

5 Q You didn't hear that yesterday in his testimony?

6 A I don't -- you mean in his deposition? I don't
7 recall that, no. But I was here, right.

8 Q But it -- certainly that's not true, is it? He
9 never was found guilty, was he?

10 A He wasn't found guilty by a jury, I know that.

11 Q Wasn't found guilty by anybody. He got a default
12 judgment --

13 MS. ROSSETTI: Objection. Calls for expert legal
14 testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I would say he was found negligent by
17 the judge that decided to accept the charges against him.

18 MR. CONWELL: I want to talk about the preliminary
19 legal opinion, Exhibit 1870. Oh, is it 1031? I'm sorry, 1031.

20 Q (BY MR. CONWELL:) Okay. You've seen this document
21 before, haven't you?

22 A Yes. Yes.

23 Q You recall that this document was handed out to some
24 people at the June 2011 annual meeting of AAPS in Tysons
25 Corner, Virginia?

1 A I understand it was distributed at that meeting,
2 yes.

3 Q Okay. And you were upset about that, weren't you?

4 A I don't know if I was upset. I was disappointed
5 after reading some of it.

6 Q Well, you were disappointed because it points out
7 that there were allegations that you were distributing
8 pornography and engaging in other inappropriate conduct; is
9 that right?

10 A I believe it does, yes.

11 Q And so I'd like to just go through this. I'm trying
12 to see -- I want to find out what it is in here that is stated
13 that you think is not true, if anything.

14 And if we can go to page 4 of the exhibit entitled
15 "Introduction.

16 Can you make that larger?

17 It says, "AAPS is in the midst of a major crisis,
18 one that appears to have been brought about by unprofessional
19 and inappropriate conduct on the part of its CEO, Mr. Bill
20 Carbone?"

21 Do you see that?

22 A Yes.

23 Q Now, that's true; you had been engaged in
24 unprofessional and inappropriate conduct, right?

25 A Definitely inappropriate.

1 Q Okay. But you think professional?

2 A It was unprofessional, yes.

3 Q So that statement's true?

4 A Yes.

5 Q "This crisis appears to have been greatly aggravated
6 by the inappropriate response of the AAPS Executive Committee
7 to the crisis possibly because of bad legal advice they may
8 have received from their attorney, Mike Nolan. The executive
9 committee's" -- well, let me stop there.

10 There -- that's true, right? That they had engaged
11 in an inappropriate response by suspending Drs. Castillo,
12 Geller, and Klein; is that right?

13 A I wouldn't categorize it as inappropriate.

14 Q It says, "The executive committee's inappropriate
15 response to this crisis suspending three prominent physicians
16 who were requesting that an investigation be performed into the
17 alleged misconduct by Mr. Carbone, which was done without
18 providing the affected members a hearing, has greatly harmed
19 three of the most loyal and esteemed members of the
20 organization," etc.

21 Do you see that?

22 A Yes.

23 Q They never got the hearing, did they? They were
24 suspended without a hearing?

25 A Correct.

1 Q Okay. Now, you know that the bylaws say that you
2 got to have a hearing, don't you?

3 A I would have to see them to refresh my recollection.

4 Q Okay.

5 A I believe that's correct, though, but I wouldn't say
6 absolutely.

7 MR. CONWELL: Well, let's look at Exhibit 1317.

8 Can you also furnish the witness Exhibit 1314?

9 Thank you.

10 (Exhibit 1314 previously marked for identification.)

11 Q (BY MR. CONWELL:) Let's look at 1314 first. Can
12 you turn to 3.05?

13 A Okay.

14 Q This says under Discipline 3.05, "The Board of
15 Directors may expel, call for the resignation of, or otherwise
16 discipline any member if two-thirds of the members of the Board
17 of Directors find that the conduct has been injurious to the
18 best interests of the Association or inconsistent with its
19 purposes."

20 Well, my page is -- page 5 is missing. Well,
21 there's a page missing, so let's go to 1317. 3.05, 1317.

22 A Yes, I'm there.

23 Q Okay. So the sentence I just read is the same,
24 right, page 4?

25 A Correct.

1 Q Then it says, "Before any such action is taken,
2 however, 30 days' prior written notice by registered mail shall
3 be given to the member to be disciplined advising that he may
4 appear in person with or without counsel and may submit such
5 evidence as he or she deems proper to show that he or she is
6 qualified to continue as a member of the Association."

7 So the bylaws require notice of a hearing and that
8 was not done; is that correct, for Dr. Castillo, Geller, and
9 Klein?

10 A The bylaws do, and I don't recall that there -- I
11 don't believe there was a prior written notice.

12 Q So the suspension was inappropriate, wasn't it?

13 A I wouldn't term it inappropriate.

14 Q I'm sorry?

15 A I say I wouldn't characterize it as inappropriate.

16 Q Even though it violates the bylaws?

17 A Maybe deficient.

18 Q Deficient, but appropriate?

19 A I didn't say appropriate.

20 Q Oh, it's neither appropriate nor --

21 A I'm not saying appropriate.

22 Q What does that mean? If it's not appropriate and
23 inappropriate, what is it?

24 A I said my term, I would characterize it as it was
25 deficient.

1 Q Okay. Well, in fact, it was unlawful, wasn't it?

2 MS. ROSSETTI: Objection. Calls for expert
3 testimony.

4 THE COURT: Sustained.

5 Q (BY MR. CONWELL:) You have personal knowledge of
6 the order granting the Motion For Summary Judgment in the
7 lawsuit filed by Castillo, Geller, and Klein, finding that
8 they -- that what had been done was in violation of 3.05 --

9 MS. ROSSETTI: Objection, your Honor.

10 MR. CONWELL: Excuse me. I'm asking a question.

11 Q (BY MR. CONWELL:) -- violated -- the suspension
12 violated 3.05 and violated Florida law because you were at the
13 hearing, weren't you?

14 MS. ROSSETTI: Objection, your Honor. It was not a
15 final judgment.

16 THE COURT: It's not valid. Overruled.

17 THE WITNESS: There's a lot that I don't recall that
18 has transpired. I was at the hearing.

19 Q (BY MR. CONWELL:) I was there, too.

20 A I --

21 Q You saw me, right?

22 A Yes.

23 Q I was arguing that this violated the bylaws and
24 Florida law. You recall that, don't you?

25 A I was at the hearing, but I don't remember

1 everything that transpired at the hearing. If that is in fact
2 what occurred --

3 Q The judge entered an order and you saw the order,
4 didn't you?

5 A I'm sure I looked at it, yes. I haven't --

6 Q You're the CEO?

7 A It's been years since I've looked at it, but, yes.

8 Q Well, let's go take a look at it Exhibit 1758.

9 A Okay.

10 Q Does this refresh your memory?

11 A Yes, it does. Thank you.

12 Q And your suspension of these three doctors was found
13 to be contrary to the bylaw, 3.05, and did not comply with the
14 Florida statutes; is that correct?

15 A Yes.

16 Q And you appealed that judgment, didn't you? AAPS?
17 I mean, AAPS appealed?

18 A Yes.

19 Q In fact, I recall I believe seeing you at the oral
20 argument. Weren't you there?

21 A I don't specifically recall being there. I was at a
22 lot of them.

23 Q And this judgment was affirmed, wasn't it?

24 A I believe it was, yes.

25 Q Okay. Yet you can't agree with me that the

1 suspensions were inappropriate?

2 A Well, after seeing this, I would say that they were.

3 Q So you now agree with the statement and the
4 preliminary legal opinion that the action of the Executive
5 Committee in suspending these three Board members was
6 inappropriate?

7 A Based on this ruling, yes.

8 Q Okay. Back to the preliminary legal opinion, back
9 at the introduction again -- I'll just wait till he pulls it
10 up. Let me know when you find it.

11 A I'm almost there. Okay. I'm there.

12 Q Exhibit --

13 A Second paragraph?

14 Q Same one.

15 A 1317.

16 Q 1031. Exhibit 1031.

17 THE COURTROOM DEPUTY: You still have that up there,
18 1031.

19 THE WITNESS: Yes, I've got it. I have it.

20 THE COURTROOM DEPUTY: Okay.

21 Q (BY MR. CONWELL:) Okay. So Dr. Okerblom wrote,
22 "It's difficult to understand why the Executive Committee would
23 have acted as they have. Their response creates the impression
24 that one or more of the members of the Executive Committee may
25 have also engaged in acts of misconduct that they are trying to

1 hide."

2 You see that? Is Dr. Cerrato on the Executive
3 Committee?

4 A Yes, I see that.

5 Q Is Dr. Cerrato on the Executive Committee?

6 A Yes.

7 Q There was some Board members with something to hide,
8 too; is that right?

9 MS. ROSSETTI: Objection. Argument.

10 THE COURT: Overruled.

11 THE WITNESS: I don't know what any --

12 Q (BY MR. CONWELL:) Herb Pardell was a Board member;
13 he's sending you pretty explicit pornography?

14 A Well, I understand that. But you said he's trying
15 to hide that. I don't know that -- that he is.

16 Q I said that he has something to hide. You don't
17 think that's something to hide?

18 A Oh. I'm not going to make a judgment based for him.

19 Q Okay. How about Mr. Montes? He's the one that
20 was -- in 2011 -- actually just prior -- around the same time
21 this preliminary legal opinion was written, found by the
22 Federal Election Commission to have violated federal election
23 law. Do you think he had something to hide?

24 A My own personal opinion based on what occurred and
25 the decision with the FEC, no.

1 Q Okay. Let's go to the next page, a Summary of
2 Events and Historical Background. This says, "Last year two
3 former high-level employees of the organization, Tim Bell and
4 Cassandra Newby, filed complaints against the AAPS with various
5 government regulatory agencies after being terminated."

6 That's true, isn't it?

7 A Yes, it's true. Yes.

8 Q And then it says, "In these complaints they made
9 numerous specific allegations of serious misconduct by
10 Mr. Carbone."

11 That's true, isn't it?

12 A Inappropriate conduct, yes.

13 Q Excuse me?

14 A Yes. I said it was inappropriate what I did.

15 Q Okay.

16 A In terms of the e-mails.

17 Q Okay. And then in the next paragraph, it says,
18 "The" -- I'm not going to read all this, but it says, "Although
19 two members of the Board of the AAPS, the representative of the
20 Emergency Medicine Academy" -- that's Dr. Geller, right?
21 Dr. Geller was the representative from the Emergency Medicine
22 Academy?

23 A Either the Academy or the Board. I don't know
24 specifically, but he was emergency medicine.

25 Q All right. -- "and the representative of the

1 Surgical Academy" -- that was Dr. Castillo; is that correct?

2 A Yes.

3 Q -- "had looked into the allegations and concluded
4 that there was some truth to them. And though they had urged
5 the Executive Committee to initiate an investigation of the
6 allegations, it did not."

7 That's all true, isn't it?

8 A Uhm, I believe, yes, it is.

9 Q Instead, the Executive Committee suspended both of
10 the Board members as well as another physician leader of the
11 AAPS who had urged the two Board members to request the
12 investigation claiming the suspended members had, quote,
13 "conspired with Tim Bell to destroy the organization," close
14 quote.

15 That's all true, isn't it?

16 A Tim Bell did --

17 Q Excuse me?

18 A Tim Bell did state that he was going to destroy the
19 organization.

20 Q That entire sentence that I just read to you is
21 true, isn't it?

22 A Yes, it is correct.

23 Q Okay. And the next paragraph it says that these,
24 uhm -- "In suspending these leaders, which was done without
25 providing the suspended members notice that they were under

1 accusation and that they could possibly be subjected to
2 discipline without articulating in the accusation the specific
3 facts supporting the conclusion that their conduct might
4 warrant their suspension, and without an open hearing at which
5 the accused could confront their accusers" -- that's all true,
6 isn't it?

7 A I would say yes.

8 Q Then it says -- "the Executive Committee not only
9 usurped powers that belong exclusively to the Board of
10 Directors at the AAPS, it acted in a manner that's entirely
11 inconsistent with the procedures specified in the bylaws of the
12 AAPS."

13 That's true, isn't it?

14 A Uhm, I would point out that it was my understanding
15 it was the Board of Directors, not just the Executive
16 Committee.

17 Q Well, again, if you can show me Board minutes where
18 the Board does this, I'd like to see them.

19 A Okay.

20 Q But the notice from the -- that you all sent said
21 that these doctors were suspended for six months, a minimum of
22 six months, while you conducted an investigation, right?

23 A I believe that's correct, yes.

24 Q And that's what it says in the next paragraph, "The
25 three physician leaders were suspended for a minimum of six

1 months."

2 That's true, isn't it?

3 A I believe that's correct also, yes.

4 Q "And after the six months of investigation, the
5 accused physicians still had not been provided any factual
6 evidence to support the allegations that they had committed any
7 wrongdoing."

8 That's true, isn't it?

9 A I think that's also correct.

10 Q Uhm, the next says, "Having the professional status,
11 medical licensure, or hospital affiliations, malpractice
12 insurance potentially effected by being suspended from their
13 board-certifying organization and having been afforded no
14 opportunity to defend themselves within the AAPS, these
15 physician leaders had been forced to respond as any would --
16 any reasonable physician similarly situated. They have been
17 compelled to file a legal action against the AAPS to have their
18 board certification and their member rights restored."

19 That's true isn't it?

20 A I would dispute this statement -- or this by stating
21 to you that it's been my understanding that this action did not
22 affect board certification and that it was done under AAPS, not
23 under the individual Boards.

24 Q Look at 3.05 in the bylaws -- or I'll tell you what.
25 Just so we don't have to flip back and forth here, Ari,

1 Exhibit 1317 were the bylaws, and in Section 3.06, Effective
2 Termination, where it describes the effect, it says, "They
3 shall no longer hold himself or herself out as a member of the
4 Association or as the holder of any of its honors, including
5 certification," doesn't it?

6 A Yes, it does say that.

7 Q Okay.

8 A However, it's my understanding that it was
9 changed --

10 Q We're going to get to that. That change was in the
11 bylaws that are effective June 25, 2012.

12 A Okay.

13 Q So we'll get to that. Now, this goes on and it
14 says -- talks about how expensive this was going to be on both
15 sides. You see that?

16 A Please tell me where you are on this document.

17 Q Page 3 of the preliminary legal opinion.

18 A Okay. Which paragraph, please?

19 Q The second and third paragraphs. I'm just trying to
20 move this along.

21 A Okay.

22 Q They talk about how expensive this was going to be?

23 A Yes.

24 Q That was true, wasn't it?

25 A Correct.

1 Q That you -- you had a law firm -- AAPS hired a law
2 firm, a large law firm in Tampa to defend it initially; is that
3 right?

4 A We -- yes.

5 Q And then after you lost the summary judgment and the
6 appeal, then you added another law firm; you hired a New York
7 law firm; is that right?

8 A We have a New York law firm as well, correct.

9 Q That was Mr. Kruzhkov who's no longer in the
10 courtroom for some reason. You hired his firm; is that right?

11 A That's correct.

12 Q And in 2000 -- I think it as 2011 alone you paid
13 them over \$600,000, didn't you?

14 A I can't answer that question accurately from this --
15 today sitting here without having --

16 Q I'm sorry. 2013.

17 A I can't answer that question accurately.

18 Q Okay. We can come back to that if we need to.

19 A Okay.

20 Q But you're the CEO. Don't you have to approve these
21 things?

22 A What do you mean by "things"?

23 Q Spending money on lawyers.

24 A The Board engages the law firms. I do not.

25 Q Does the Board write the checks?

1 A No.

2 Q That's done by staff?

3 A I didn't say that right.

4 Q And who manages that staff?

5 A I do.

6 Q And you're telling me you don't know what you've
7 been paying to lawyers for all this litigation over these
8 suspensions and the expulsion of Dr. Stewart?

9 A Well, I wasn't intending to make that statement, or
10 your interpretation of that statement isn't what I was
11 intending it to be.

12 Q So you do?

13 A Pardon me?

14 Q You do know?

15 A I would have to look at our accounts to tell you
16 exactly what we paid --

17 Q Well, give us an approximation.

18 A I don't know.

19 MS. ROSSETTI: Objection, your Honor. We're not
20 supposed to be discussing financials at this stage of the case.

21 THE COURT: We're not discussing -- we're not
22 discussing financials of the organization.

23 MS. ROSSETTI: Well --

24 THE COURT: We're talking about legal bills, whether
25 or not he's approved \$600,000 for this law firm.

1 MS. ROSSETTI: But it's not supposed to include
2 anything having to do with the current matter, your Honor.

3 THE COURT: Overruled.

4 Q (BY MR. CONWELL:) Okay. Well, would you agree with
5 me that this preliminary legal opinion was spot on regarding
6 how expensive the course of action chosen by AAPS was going to
7 be?

8 A That's -- that's an opinion that you are presenting.

9 Q No. I'm asking you will you agree with that?
10 You're the one that said you had all these disagreements from
11 the preliminary legal opinion.

12 A Would you reiterate that question again, please?

13 Q Reiterate it?

14 A Repeat. Would you repeat the question again?

15 Q This preliminary legal opinion was spot on in its
16 statement how expensive the course of action chosen by AAPS was
17 going to be?

18 A I would answer that by saying there's no doubt about
19 it that it was expensive. I can't give you the precise amounts
20 paid to legal counsels at a specific time.

21 Q And in addition to the money that you've been paying
22 to -- well, you filed a lawsuit against Dr. Stewart in Florida,
23 didn't you?

24 A I -- I did not.

25 Q I'm sorry. That's my mistake. The AAPS did?

1 A The Board of Directors did, correct.

2 Q The organization that you're the CEO of has sued
3 Dr. Stewart in Florida, right?

4 A Correct.

5 Q Sued her husband in Florida?

6 A That's also correct.

7 Q And sued other members of the AAPS in Florida,
8 right?

9 A Right. Correct.

10 Q And you've been spending a lot of money in suing
11 your own members, haven't you?

12 A Yes.

13 Q Plus you've got the risk of paying money damages
14 because you're being -- your organization's being sued,
15 certainly here in this courtroom, right?

16 A There's always a risk, correct.

17 Q And in Florida; is that right?

18 A Yes.

19 Q And then in the next paragraph down it says,
20 "Several members of our organization have questioned why these
21 physician leaders who have -- who each had a very strong track
22 record of service to AAPS and were board certified through it
23 could have been accused of trying to destroy their
24 board-certifying organization and been suspended without a
25 hearing and without articulation of the specific facts upon

1 which their suspension was based."

2 Do you see that?

3 A Yes.

4 Q You agree that that doesn't make any sense
5 whatsoever that these board-certified physicians would be
6 trying to destroy the organization that gives them their board
7 certification?

8 A I don't know if all these physicians had a strong
9 track record.

10 Q Maybe you didn't understand my question. It doesn't
11 make any sense for AAPS to allege that these doctors who are
12 board certified with the AAPS would try to destroy their
13 board-certifying organization, does it?

14 A Doesn't make sense to me. It doesn't mean it
15 doesn't make sense to someone else.

16 Q I'm only asking about you.

17 A Doesn't make sense to me.

18 Q So you agree with Dr. Okerblom this doesn't make
19 sense?

20 A I would not try to destroy the organization that I
21 was depending on for my certification, personally.

22 Q Okay. I think we're in agreement on this.

23 Now, the next paragraph he says, "The Executive
24 Committee is currently asking our House of Delegates to approve
25 a new Bylaws Amendment that will provide the Executive

1 Committee with the power to suspend members of the AAPS for any
2 reason, even political reasons, at will and without a hearing."

3 Now, you saw the testimony by Dr. Rice and there's
4 been other references to it by Dr. Lemonick and others about
5 this amendment that would give all these powers to the
6 Executive Committee. You recall that?

7 A Yes, I do.

8 Q And you're very well aware of that amendment, aren't
9 you?

10 A I wouldn't say very well. I'm aware of it.

11 Q Okay. And so in this document -- by the way, that
12 was up for vote at the House of Delegates' meeting in June of
13 2011 in Tysons Corner, Virginia, right?

14 A Yes, that's correct.

15 Q So this preliminary legal opinion is writing about
16 the proposed amendment that was going to be voting on, right?

17 A Correct.

18 Q That's called political speech, isn't it?

19 A If that's what you call it, that's --

20 Q Advocating for or against a measure that's to be
21 voted on by a legislative body, right?

22 A Yeah. If you call it political speech, I'll accept
23 that.

24 Q And this document, this preliminary legal opinion,
25 is advocating that this amendment not be passed by the House of

1 Delegates; isn't that right?

2 A I haven't read it all here to see if that's the
3 actual opinion or --

4 Q Well, take a look at the last page --

5 A I'm still on page 3. Okay.

6 Q I'm going to help you out here.

7 A Well --

8 Q Go to page 14, if you would, please.

9 A I'm there.

10 Q Okay. And do you see the last paragraph -- last
11 paragraph, page 14 --

12 A Yes, I do.

13 Q Can you see that?

14 A Yeah, I see it.

15 MR. CONWELL: No, you're not on the right page. Let
16 me see. It's page 1031-17. Got it? Dash 17. I'm just going
17 to switch over here.

18 Q (BY MR. CONWELL:) The preliminary legal opinion
19 ends with this paragraph, "The House of Delegates should vote
20 down the proposed new bylaws. They should restore the powers
21 of the Board of Directors and once again limit the powers of
22 the Executive Committee. They should terminate the contract
23 with Attorney Nolan and seek to settle its lawsuit with
24 Dr. Castillo, Geller, and Klein" -- this says Stein; should be
25 Klein. "They should apologize to Dr. Wilkens and Dr. Radentz.

1 They should initiate an investigation into the allegations that
2 Mr. Carbone has misused members' funds. They should attempt to
3 restore the kind of good character that this organization needs
4 to possess in order to serve its members and the community at
5 large. This may mean investigating the conduct of the current
6 Executive Committee, and could mean replacing some or all with
7 new officers who are committed to following the bylaws and
8 upholding the principles upon which the organization must be
9 based if it is to survive and prosper."

10 You see that?

11 A Yes.

12 Q You -- you did not want the Bylaw Amendment voted
13 down. You wanted it approved; is that right?

14 A That's incorrect.

15 Q But you wanted it voted down?

16 A That's incorrect.

17 Q Why is it incorrect?

18 A It's the Board's purview for bylaws. It's not the
19 CEO's purview.

20 Q So you don't have any disagreement with the advocacy
21 in this document for voting down this amendment?

22 A I don't understand the question.

23 Q This -- this document advocates voting down the
24 amendment that gives this super power to the Executive
25 Committee.

1 A I understand that.

2 Q And you -- you don't have any issue with a letter
3 being furnished to the people voting -- telling them why they
4 should vote it down, do you?

5 A I think it'd be appropriate if it came from a voting
6 member or member of the organization.

7 Q Okay. But this came from Dr. Okerblom and he was
8 not a voting member?

9 A Not that I knew about.

10 Q Okay. So that's your problem with this is that it
11 did not come from a voting member?

12 A No. That's one issue. I didn't say that was my
13 problem. That's one issue. But my point is everybody's
14 entitled to their opinion, every member is entitled --
15 appropriately entitled and they can position with the
16 organization. I don't know do that. That's not my purview.

17 Q Let me ask you. Is this document -- maybe I
18 misunderstood the defendant's case. Is this document something
19 that you're using to support your expulsion of Dr. Stewart from
20 the AAPS because Dr. Okerblom, her husband, prepared it?

21 MS. ROSSETTI: Objection. Calls for an expert legal
22 opinion.

23 THE COURT: Overruled.

24 THE WITNESS: I don't believe I said that.

25 Q (BY MR. CONWELL:) Well, I'm asking you that.

1 A No. I don't believe that's the case.

2 Q Okay. Is it because Dr. Stewart handed out I think
3 four copies of it to people she knew at the House of Delegates'
4 meeting in June of 2011? Is that why she was expelled? For
5 handing out four copies of this and talking to people about it?

6 MS. ROSSETTI: Objection. Lacks foundation.

7 THE COURT: Overruled.

8 THE WITNESS: I don't believe that to be the case,
9 but I haven't been involved in those discussions.

10 Q (BY MR. CONWELL:) Okay. Well, what -- can you turn
11 to page 4 of this document?

12 A Of the same document we're in?

13 Q Yes, sir.

14 A Okay.

15 Q This is Exhibit 1031 --

16 A Seven?

17 Q -- dash 7.

18 A Okay.

19 Q 1031-7.

20 A Okay.

21 Q It says, "It is the Executive Committee whose
22 actions are threatening to destroy the organization. The
23 manner of governance that is currently being practiced by the
24 Executive Committee is extremely radical and undemocratic
25 resulting in suspension of due process, suppression of free

1 thinking, and of the members' rights to exercise their
2 constitutionally guaranteed freedom of speech. It is without
3 precedent in any other fellowship of physicians and is so
4 extreme that if continued, it will most certainly result in the
5 loss of the AAPS's status as a board-certifying organization.

6 If the members to the AAPS wish to prevent
7 irreparable harm from occurring to their organization, they'll
8 have to persuade the members of the House of Delegates to
9 disapprove of the new Bylaws Amendment and demand that their
10 governing bodies operate in accordance with the bylaws as they
11 were currently written."

12 Would you agree that's appropriate advocacy against
13 passing that amendment that gives that super power to the
14 Executive Committee?

15 A The last -- these two paragraphs you're referring
16 to?

17 Q Right.

18 A Not to the last one? This -- this individual has an
19 opinion and put it in writing. I think it's inappropriate that
20 the opinion was being disseminated or circulated by a nonmember
21 of the organization.

22 I don't have any issue with anyone that's a member
23 advocating a position on any issue within the organization.

24 Does that answer what --

25 Q Well, I think -- I think we're in agreement. You're

1 saying that it's perfectly fine for Dr. Stewart to disseminate
2 this document at the 2011 meeting, right?

3 A Do I -- the question is do I think it's appropriate
4 for her to disseminate this document in its entirety --

5 Q Yes.

6 A -- to members at the annual meeting?

7 Q To the people who are going to be voting on that
8 bylaw.

9 You seem to be struggling. What's the problem?

10 A Well, I think it's appropriate for people to express
11 their views in writing and otherwise unencumbered by anything
12 else.

13 But my -- my concern in answering this question to
14 you is what I'm thinking about, I think the way in which this
15 was proceeded, process, was not appropriate.

16 Q Her handing it to people? Is that what you mean by
17 the procedure? She put it in people's hands?

18 A I think it would have been appropriate to present it
19 to the Board of Directors ahead of time and sit down with
20 people and discuss your concerns rather than distribute it at a
21 meeting and to limit the number of people you distribute it to,
22 yes.

23 Q Let me ask you this. At the 2011 annual meeting,
24 were you present during her meetings with Dr. Russo and
25 Dr. Montes on this issue?

1 A I don't recall if I was.

2 Q You know she had conversations with Dr. Russo and
3 Dr. Montes at the 2011 meeting on this very topic?

4 A I don't recall. Okay.

5 Q That's the proper channel, right?

6 A Okay.

7 Q Who was Russo?

8 A Yeah. If in fact that's correct, and irrespective
9 of me recalling, I think that's okay.

10 Q Okay. Who is Russo?

11 A Who is Russo?

12 Q Yeah. In 2011 --

13 A Russo was --

14 Q -- wasn't he president?

15 A -- past president, right.

16 Q Past -- he was a past president?

17 A Well, he is now.

18 Q 2011?

19 A He was president.

20 Q And Montes was on the Board?

21 A I believe that's right.

22 Q Okay. So you think that -- I'm still -- I'm trying
23 to find out what it is that you were objecting to.

24 A I'm not objecting to anything.

25 Q Okay. The AAPS, the company that you're the CEO of.

1 What is it the AAPS is objecting to as to what she did with
2 this preliminary legal opinion?

3 A I think there are two issues, but I can't speak for
4 the Board of Directors. Personally, I think there are two
5 issues: One, that this document was not presented to the Board
6 of Directors in advance of the meeting, even though discussions
7 may have been held with several Board members; and two, I think
8 there's concern about the statements or misstatements,
9 allegations, etc., that are listed in this document.

10 Q Well, I haven't -- we haven't seen any misstatements
11 so far. So maybe this'll speed it up.

12 Tell me what is it in this document that is a
13 misstatement.

14 A I would have to go through the entire document.

15 Q Well, surely by now -- this happened in 2011. We're
16 four years later, we're two years into a lawsuit. Surely by
17 now you've figured that out, haven't you?

18 A A lot comes across my desk. There's been a lot of
19 issues, there's been a lot of developments with these lawsuits,
20 and without having the opportunity to look at the details here,
21 that wouldn't be appropriate for me to answer you one way or
22 the other. I don't know without looking at it.

23 Q Well, I was --

24 A Okay?

25 Q We can do it that way. Turn to page 5 of the

1 document which is Bates number 1031-8.

2 A I'm on page 5.

3 Q Okay. So Details, Analysis Supporting Documents,
4 "The situation appears to have arisen as follows: No. 1,
5 Timothy Bell, a former employee of the AAPS, becomes a
6 whistleblower, "and it says in here, "He became a whistleblower
7 reporting the AAPS to various government agencies and
8 credentialing bodies. He also sent e-mails to some of the
9 members of the Board alleging various forms of misconduct that
10 Mr. Carbone had been supposedly engaged in which most of the
11 Board members had not previously heard about."

12 Now, that's all true, isn't it? Mr. Bell did report
13 things to various government agencies, right?

14 A Yeah. From my understanding he did, yes.

15 Q And he sent various e-mails of misconduct that you,
16 Carbone, had supposedly engaged in, right?

17 A Yes, he did.

18 Q So this is -- this is true, this is correct, isn't
19 it?

20 A That paragraph would be, yes.

21 Q Now, Mr. Okerblom is still saying "supposedly" and
22 "allegedly." He's not saying you in fact did it, is he?

23 A Where is that he's saying "allegedly"?

24 Q I just read it, "alleging various forms of
25 misconduct that Mr." --

1 A Okay.

2 Q -- "that Mr. Carbone has been supposedly engaged
3 in."

4 A Okay. Thank you.

5 Q And then the next big sentence uses the word
6 "allegations"?

7 A No problem. I see it. Thank you.

8 Q Okay. So you see that. You agree with that?

9 A Yes, I do, yeah.

10 Q And now -- but in fact, it was true, right? You've
11 now told us this morning that was all inappropriate and
12 improper and unprofessional, I think?

13 A I said I inappropriately did that, yes, I did.

14 Q Okay.

15 A Yep.

16 Q So let's go on to the next part B, "Mr. Bell
17 informed the Board that AAPS was on CME credentialing
18 probation."

19 Well, that was true, wasn't it? You were on
20 probation?

21 A Correct.

22 Q Okay. C, "Mr. Bell informed the Board that
23 Mr. Carbone had engaged in inappropriate conduct in dealing
24 with his subordinates."

25 And it says that, "Mr. Bell sent to members copies

1 of very explicit pornographic images together with tracing
2 records which showed that the images had originated from
3 Mr. Carbone's computer. He accused Mr. Carbone of circulating
4 this kind of pornography among the office staff."

5 Mr. Bell in fact made those allegations, didn't he?

6 A Right. I will dispute this one. He was the only
7 one that I sent it to -- sent them to.

8 Q Well --

9 A This references "office staff."

10 Q Okay.

11 A Okay?

12 Q Mr. -- the question is Mr. Bell alleged that you had
13 sent it to --

14 A Okay.

15 Q -- office staff; is that right?

16 A He can allege anything he wants to, right.

17 Q Okay.

18 A Right.

19 Q So it's true that he alleged it. You're just saying
20 that it wasn't true?

21 A Correct.

22 Q You're saying you sent it only to Bell?

23 A Correct.

24 Q All right. And then D, "Additional evidence which
25 surfaced which appeared to substantiate this allegation."

1 Then he talks about Cassandra Newby files a lawsuit
2 for sexual harassment in which he says you, in fact, sent it to
3 her, right?

4 A Right what? That he alleges that?

5 Q Yes.

6 A Yes.

7 Q And Ms. Newby alleged that, didn't she?

8 A She did.

9 Q Okay. I know you disagree with it, but all this
10 says is it's been alleged in her lawsuit which appears to
11 confirm this, right?

12 A Yes.

13 Q So this statement by Dr. Okerblom is also correct,
14 right? That this -- these allegations were made and they
15 appear to substantiate the allegation?

16 A Yes.

17 Q Okay. So now E, "Dr. Castillo and Geller requested
18 the president and president-elect to initiate an
19 investigation," as to whether you'd engaged in inappropriate
20 conduct.

21 And then it says in the body of it that,
22 "Dr. Castillo felt strongly that performing an investigation
23 into Carbone's alleged misconduct should be a top priority for
24 the Executive Committee," you know.

25 This is all correct, isn't it? That's what

1 happened? There was a call for an investigation?

2 A Yes.

3 Q Okay. F, "Instead of investigating, the Executive
4 Committee suspended Drs. Castillo, Geller, and Klein."

5 We already know that's true, right?

6 A Yes.

7 Q G, "The Executive Committee does not have the power
8 to suspend, did not follow the procedures specified in the
9 bylaws to ensure the due process afforded."

10 And then he spells out that 3.05, and he even quotes
11 it here, "provides for a procedure for this and that procedure
12 was not followed."

13 That's all correct, isn't it?

14 A That's correct.

15 Q Okay. "Thus, the Executive Committee had no
16 authority to suspended members since that authority belonged to
17 the Board and not the Executive Committee," correct?

18 A Correct.

19 Q Then, H, "There was no evidence that any of the
20 three doctors had done anything wrong."

21 And then he quotes a letter that he attaches to this
22 document from your attorney in Florida, Mr. Nolan, to
23 Ms. Kegel, the president or the head of the Surgery Academy, in
24 which your own attorney says, "Realizing that the evidence was
25 incomplete and also realizing that the current AAPS bylaws do

1 not address such a situation, the AAPS Board at my
2 recommendation decided to take the step of suspending the
3 membership."

4 That's what your attorney's letter said, didn't it?

5 A Yes.

6 Q Okay. Then in the next paragraph, "There was no
7 evidence that any of the suspended members had conspired to
8 harm the AAPS."

9 Right?

10 A I believe at the time, yes, that's correct.

11 Q Okay. And in fact, he says, "All the evidence on
12 that issue points to the fact they were intending to help the
13 organization by requesting an investigation into allegations
14 that were supported by substantial evidence that Mr. Carbone
15 had engaged in acts of unprofessional conduct," etc.

16 Do you see that?

17 A Yes.

18 Q That's all true, right?

19 A Yes.

20 Q Okay.

21 THE COURT: How many more of these are there?

22 MR. CONWELL: Well, your Honor, I -- I tried a
23 faster way to do this --

24 THE COURT: How many more of these are there?
25 Because I'm going to try a faster way.

1 MR. CONWELL: Okay. I'm on page --

2 THE COURT: How many items?

3 MR. CONWELL: Uhm, 1, 2 --

4 THE COURT: What letter of the alphabet?

5 MR. CONWELL: -- 4, 5 -- five items.

6 THE COURT: You're familiar with this, aren't you?

7 You're familiar with this document, aren't you?

8 THE WITNESS: Yes.

9 THE COURT: Because you've expressed an opinion
10 regarding this document whether or not the allegations set
11 forth in the document are true or false. You've testified to
12 it just now, right? You disagree with things stated in this
13 document, right?

14 THE WITNESS: Yes.

15 THE COURT: Identify them.

16 THE WITNESS: Well, so far I haven't been able to
17 identify --

18 THE COURT: No, no, no, no. Before you gave your
19 answer that you disagreed with some of the things in this
20 document--

21 THE WITNESS: Right.

22 THE COURT: -- before you answered that question,
23 you had in your mind items that you disagreed with. Just
24 simply identify them now.

25 THE WITNESS: Well, I guess I can't.

1 THE COURT: Let's move on.

2 THE WITNESS: Okay.

3 MR. CONWELL: Okay. Okay. Take a look at
4 Exhibit 1446.

5 (Exhibit 1446 previously marked for identification.)

6 Q (BY MR. CONWELL:) And can you identify that for us,
7 please?

8 A These are the minutes of the House of Delegates
9 meeting of June 25th, 2011.

10 Q Okay. And that is the meeting where the House of
11 Delegates voted on the amendment; is that right?

12 A I understand that to be correct, yes.

13 Q And are you required -- is the AAPS required to send
14 out notice of what's going to be voted on?

15 A Yes.

16 Q And so you had to send out notice to -- that
17 identified the specific language of this amendment; is that
18 right?

19 A Yes.

20 Q And -- and the purpose of that is so the people
21 could prepare for the meeting and decide what their position
22 was going to be on the issue; is that right?

23 A Yes.

24 Q Now, Patricia Stewart, Dr. Stewart, was a governor
25 of the Dermatology Academy; is that right?

1 A I can't specifically recall at that time. We've got
2 over ten different academies, so I -- I don't know specifically
3 if she was.

4 Q Okay. You don't dispute that she was?

5 A No, I do not.

6 Q And she certainly had the right to speak up at the
7 House of Delegates' meeting stating the position of her
8 constituents regarding this issue; is that right?

9 A Yes.

10 Q Okay. So is there anything about her speaking up --
11 we've talked about her handing out the preliminary legal
12 opinion. Now I want to talk -- say is there anything about her
13 speaking up at that meeting that got her expelled?

14 A That got her what?

15 Q Expelled.

16 A Not that I'm aware of.

17 Q Okay. In fact, she wasn't the only one opposing
18 that amendment; is that right?

19 A I believe that's correct.

20 Q Do you recall Dr. Lemonick gave an impassioned
21 speech at that meeting as to why this was bad for the AAPS and
22 would injury the AAPS?

23 A Yes.

24 Q And this -- there was so much opposition to this
25 amendment that was attempting to give power to the Executive

1 Committee to do to every member what they did to Castillo,
2 Geller, and Klein, that it was withdrawn; is that right?

3 A The proposal was withdrawn, correct.

4 Q Okay. And I want to move to January 10, 2012.
5 There was a meeting of the Dermatology Academy by conference
6 call. You've heard that, haven't you?

7 A Did I what? Sorry.

8 Q A meeting of Dermatology Committee -- committee --
9 excuse me -- a conference call of the Dermatology Academy?

10 A I guess there was.

11 Q And who's Mr. Cotton?

12 A He was the governmental affairs liaison of the
13 organization at one time.

14 Q And Mr. Cotton reported to you, didn't he?

15 A Yes, he did.

16 Q And you had Mr. Cotton record the dermatology
17 meeting that occurred on January 10, 2012; is that right?

18 A I don't recall that I did.

19 Q He did record it, didn't he?

20 A I believe that's correct, yes.

21 Q He gave the tape of that recording to Mr. Durante,
22 and you also obtained the tape; is that right?

23 A I think that's correct also, yes.

24 Q And you listened to the tape; isn't that true?

25 A No, I did not listen to the tape.

1 Q You authorized that tape to be given to people
2 outside the organization, including your attorneys; is that
3 right?

4 A I don't recall I authorized it, per se.

5 Q Okay. Well, who -- you're the CEO. If not you,
6 who?

7 A It could have been the Executive Committee. Could
8 have been the president.

9 Q You don't deny that you authorized it, do you?

10 A I don't recall if I did or I did not.

11 Q So, right, you're not denying it; is that correct?

12 A Correct.

13 MR. CONWELL: Okay. Let's look at the May 8th
14 charging document, Exhibit 1498.

15 (Exhibit 1498 previously marked for identification.)

16 Q (BY MR. CONWELL:) Do you recall this?

17 A I've seen this letter before, yes.

18 Q Okay. And in this document, the AAPS is notifying
19 Dr. Stewart that she is going to be subject to disciplinary
20 proceedings; is that right?

21 A Yes.

22 Q It says, "Please be advised pursuant to Section 3.05
23 of the bylaws, a special meeting of the disciplinary committee
24 of the Board of Directors has been called for Saturday, June 9,
25 2012, at 10 A.M. at the Intercontinental Hotel," and they give

1 the address in Tampa Florida. You see that?

2 A Yes, I do.

3 Q This was all occurring pursuant to Section 3.05?

4 A That's my understanding.

5 Q Okay. Of the bylaws that existed on May 8, 2012; is
6 that right?

7 A I believe that's true also, yes.

8 Q Okay. And let's turn back to those bylaws. I
9 believe that's Exhibit 1317.

10 So I just want to go to the first page -- make
11 that -- there you go. If you can enlarge the top.

12 This is "Bylaws Fifteenth Revision Adopted June 25,
13 2011." You see that?

14 A Yes.

15 Q Now, I want you to look at Exhibit 1341, which is
16 the 16th revision.

17 This 1317, which was adopted June 25, 2011, is the
18 15th.

19 Okay. Now I want us to look at the 16th which is
20 Exhibit 1341. Do you have that?

21 A No -- oh, now I do. Okay.

22 MR. CONWELL: Okay. Stop. If we can enlarge the
23 top.

24 Q (BY MR. CONWELL:) So these are dated June 25th --
25 says, "Sixteenth Revision Adopted June 25, 2012."

1 See that?

2 A Yes, I see it.

3 Q Okay. So -- and there's not a 15-and-a-half or
4 anything like that, is there?

5 A Not to my knowledge there isn't, no. I don't think
6 so.

7 Q Okay. So since the 16th revision was adopted
8 June 25, 2012, and Dr. Stewart was expelled and her
9 disciplinary proceedings were prior to that date, the operative
10 bylaws for her disciplinary proceedings were the 15th revision,
11 correct?

12 A I would agree with that, yeah.

13 Q Okay. So just want to make sure we're looking at
14 the right ones. So let's look at the 15th revision that this
15 May 8th letter says she's being disciplined under.

16 It says in paragraph A, as we've seen before, that,
17 "The Board of Directors may expel, call for the resignation
18 of" -- we're still on page 4 -- "or otherwise discipline any
19 member if two-thirds of the members of the Board of Directors
20 find that the conduct of the member has been injurious to the
21 best interests of the Association or inconsistent with its
22 purposes."

23 See that?

24 A Yes.

25 Q What had Dr. Stewart done as of May 8, 2012, that

1 was injurious to the best interests of the Association or
2 inconsistent with its purposes?

3 A I'm not aware of anything specifically.

4 Q Okay.

5 A In other words, I don't have knowledge.

6 THE COURT: Ladies and gentlemen, we're going to
7 take -- well, actually it's going to be the last break that
8 we're going to take. Let's keep it to ten minutes.

9 Please remember the admonition, please.

10 THE COURTROOM DEPUTY: All rise.

11 (A recess was taken.)

12 (Open court in the presence of the jury.)

13 THE COURT: We've been joined by the jury. All
14 counsel and the parties are present, and Mr. Carbone has
15 resumed his place on the witness stand.

16 You may continue, counsel.

17 Q (BY MR. CONWELL:) Okay. The May 8th charging
18 document, Exhibit 1498. All right. Do you have it, sir?

19 A Yes, I have.

20 Q And if you go to -- of the second paragraph at this
21 meeting. You see that?

22 A Yes, I do.

23 Q "Committee will consider charges against you for
24 conduct injurious to the best interests of AAPS and/or
25 incompatible with its purposes as more specifically described

1 in the materials annexed here as Exhibit 1. The committee will
2 present its recommendations on the appropriate level of
3 discipline which may include termination of your membership
4 privileges in AAPS for action by the full Board of Directors at
5 the Board's next meeting."

6 Now, this -- this charging document with the
7 attachment is fairly thick, isn't it?

8 A Yes.

9 Q We've counted. It's over 160 pages of allegations,
10 isn't it?

11 A It is 160 pages, yep.

12 Q And in terms of allegations against Dr. Stewart, all
13 it says is all these other people did something and you
14 conspired, right?

15 A What says that? What states that?

16 Q The charging document.

17 A Okay.

18 Q Do you recall?

19 A No, I don't recall.

20 Q This document alleges -- do you recall that this
21 document alleges that Dr. Stewart conspired with Timothy Bell?

22 A And how -- what is the question, sir?

23 Q What information did AAPS have on May 8th -- excuse
24 me -- yeah, May 8, 2012, that Dr. Stewart conspired with
25 Timothy Bell?

1 A I don't know what they had, the committee had. I
2 had no information.

3 Q Just to save time, would that be true on anything in
4 here? If I asked you what basis did you have for making these
5 charges, you would say, "I don't know. Talk to somebody else"?

6 MS. ROSSETTI: Objection. Lacks foundation.

7 THE COURT: Overruled.

8 THE WITNESS: So you're asking me if I would agree
9 to that every page in here --

10 Q (BY MR. CONWELL:) Well, I certainly don't want to
11 go through every page. So I'm trying to find a way to shortcut
12 this.

13 A I understand that. So how about rephrasing it--

14 Q Is there any allegation in this document against
15 Dr. Stewart that you can verify?

16 A I would say I'm not aware of -- aware of anything in
17 general, but I don't know if I've read 160 pages and I'm
18 familiar with it. I'm sorry, but that's the truth.

19 Q Okay. Well, let's go to the next paragraph in the
20 May 8th letter, the third paragraph. It ays, "Under
21 Section 3.05 you may -- of the bylaws, you may appear in person
22 with or without counsel before the disciplinary proceedings at
23 the appointed time to present evidence that you are qualified
24 to continue as a member in good standing with AAPS. If you
25 choose to appear in person, you will be given up to 15 minutes

1 for oral presentation to the disciplinary committee."

2 You see that?

3 A Yes, I see it.

4 Q Now, it would take more than 15 minutes just to read
5 this charging document, wouldn't it?

6 A I would say so, yes.

7 Q You've got to agree that 15 minutes is not a
8 reasonable amount of time for this hearing, is it?

9 A I didn't set that time, so --

10 Q Okay. Well, thank you for that information.

11 But my question is you would agree with me that
12 15 minutes is not a reasonable amount of time?

13 A Based on these documents, yes.

14 Q Based on these documents?

15 A Based on reviewing these, you said? That was
16 your --

17 Q Okay. So you're agreeing with me 15 minutes is not
18 a reasonable amount of time?

19 A Yes.

20 Q Okay. And if Dr. Stewart had requested up to two
21 hours, only two hours -- and I think your examination this
22 morning has been longer than that -- if she'd requested only
23 two hours for this hearing, that should have been granted,
24 shouldn't it?

25 A I don't know if it's my purview to make a judgment

1 of -- based on that question because I wasn't part of the
2 committee in any way.

3 Q Okay. Well, do you have a view on that as to
4 whether or not she should have been given two hours if she
5 asked for it?

6 A I don't know about two hours, but I think more time
7 should have been afforded.

8 Q Okay. Do you have a number in mind?

9 A No, sir.

10 Q It says also, "Please be advised that only you and
11 your counsel will be allowed in the room during the meeting of
12 the disciplinary committee."

13 You see that?

14 A Yes, I do.

15 Q So that means that if she has a witness that she
16 wants to bring to give testimony to this investigative
17 committee, she's not allowed to bring any witnesses; is that
18 right?

19 A Well, she can only be limited to the total number of
20 people, whether -- whoever they are. So --

21 Q What? I don't understand that.

22 A Well, that only her and her counsel can be there.

23 Q Okay.

24 A Right?

25 Q So you're agreeing with me, that she's --

1 A So I'm saying that it's limited to those two
2 representatives, her and her counsellor.

3 Q Right.

4 A So therefore --

5 Q This isn't hard. This isn't hard, okay? I'm asking
6 you simply --

7 A I understand it isn't hard.

8 Q She want allowed to bring a witness --

9 THE COURT: (Knocked three times.) You know better;
10 I understand he doesn't. One at a time.

11 Q (BY MR. CONWELL:) Are you finished?

12 A Yes.

13 Q Okay. She was not allowed to bring any witnesses,
14 was she?

15 A Correct.

16 Q But this is an investigative committee, right?

17 A Yes, it was.

18 Q And they're supposed to make a recommendation of
19 potentially expelling her from the organization, right?

20 A Yes.

21 Q Okay. Don't you think that it would be fair if
22 you're potentially going to be expelled from your
23 board-certifying organization that you be allowed to bring a
24 witness in your own defense?

25 A I have no opinion on that.

1 Q Okay. You -- do you see anywhere in this document
2 where it identifies the members of the disciplinary committee?

3 A Referencing the first page or the entire 160 pages?

4 Q Well, the 160. That's the complaint. That's the
5 lawsuit you filed -- or your company filed against her.

6 A Right.

7 Q Right?

8 A Right.

9 Q So I don't think it's going to say there. But
10 you're welcome to look if you want, but on the letter --

11 A I just want to be clear, that's all. Okay.

12 Q -- it just says the disciplinary committee, correct?

13 A Correct.

14 Q And who created that disciplinary committee?

15 A I believe it was the president.

16 Q Who was Bob Cerrato?

17 A Yes.

18 Q And Bob Cerrato in this letter did not identify who
19 the members of the disciplinary committee were; is that
20 correct?

21 A Yes.

22 Q Don't you think it would be fair to let the accused,
23 Dr. Stewart, know whether or not she was going to be appearing
24 in front of a fair and an impartial tribunal?

25 A I don't know whether listing the members of the

1 committee is pertinent to the issue of the committee.

2 Q Let me ask the question again.

3 A Okay.

4 Q Do you think it would be fair to let the accused
5 know whether she would be appearing in front of an impartial
6 tribunal?

7 A I think it would be fair, yes.

8 Q And so turns out the disciplinary committee was
9 chaired by Dr. Stephen Montes; is that right?

10 A Yes.

11 Q And Dr. Montes was certainly a subject of part of
12 the controversy surrounding the suspension of Drs. Castillo,
13 Geller, and Klein as it relates to the ACCME probation and the
14 Federal Election Commission violations; is that right?

15 A That's correct.

16 Q You don't consider him to be impartial in this
17 matter, do you?

18 A That's a difficult question to answer because I am
19 not privy, knowledgeable to his interactions with Dr. Stewart
20 or anybody else directly, so it's hard for me to make a
21 judgment.

22 Q Isn't the fact that he's at the center of the
23 controversy that are in these pages of allegations against
24 Dr. Stewart enough for you to answer that question?

25 A I can understand the concern based on what you just

1 stated, but I can't say for certain he would not be impartial.

2 Q But don't you think there's at least the appearance
3 of partiality and bias on his part given the fact that he's one
4 of the centers of the controversy?

5 A Someone could certainly come to that conclusion,
6 yes.

7 Q Certainly reasonable for the accused to be concerned
8 about that, isn't it?

9 A Yes.

10 Q And she had a right to an impartial tribunal, didn't
11 she?

12 A I don't see why not.

13 Q You're agreeing with me, aren't you?

14 A Correct.

15 Q Now, there was also Dr. Maggio. He was on the
16 disciplinary proceedings; is that right?

17 A I believe that's correct, yes.

18 Q He's also was on the legal task force; is that
19 right?

20 A Yes, that is correct, too.

21 Q And Bob Cerrato appointed the legal task force,
22 didn't he?

23 A I don't know if it was the president or the
24 Executive Committee or the Board. I don't recall.

25 Q Okay. Montes, Dr. Montes, was also on the legal

1 task force, wasn't he?

2 A That's correct.

3 Q And Dr. Gallagher was on the legal task force?

4 A He may have been at one time. My memory isn't
5 working well at this moment about that.

6 Q We can bring documents to show it. If you remember,
7 just tell us. If you don't --

8 A He was on it at one point, I remember.

9 Q And Dr. Gallagher was one of the doctors that you
10 exchanged porn with, right?

11 A That's correct.

12 Q And he was put -- he was put on the legal task force
13 by Bob Cerrato to make a recommendation as to whether or not to
14 proceed with a lawsuit against Dr. Stewart and others; is that
15 right?

16 A I don't know if Dr. Cerrato was the person that
17 appointed him, but he was on at one time, yes.

18 Q Okay. So whoever appointed him, he was also
19 interested in the controversy that's at the center of all this
20 as it relates to the exchange of pornography between AAPS's CEO
21 and members of the Board of Directors; is that right?

22 A I -- he had an interest, yes.

23 Q Okay. Don't you think she had a right to an
24 impartial legal task force also given that what they were doing
25 is giving a recommendation to the Board on whether or not to

1 file a lawsuit?

2 A Yes.

3 Q Certainly you can understand Dr. Gallagher's concern
4 if these people aren't stopped, that he might be exposed to his
5 friends and family as someone exchanging some pretty explicit
6 pornography with you, right?

7 A I can't speak to how he would feel. I would myself.

8 Q Okay. So the legal task force was Dr. Montes,
9 Dr. Gallagher, and Dr. Maggio, right?

10 A I think there may have been an additional person on
11 that task force.

12 Q Oh, Dr. Cerrato.

13 A And I think another one, too.

14 Q Who was the other one?

15 A Dr. Wallace.

16 Q Dr. Wallace, okay. Okay. So then the disciplinary
17 proceedings is Dr. Montes, who was on the legal task force,
18 Dr. Maggio, who was on the legal task force, and Dr. Wallace,
19 who you just said was on the legal task force, right?

20 A Yes.

21 Q So the prosecutor, so to speak, the legal task
22 force, the ones that made the recommendation to sue
23 Dr. Stewart, are now being put on the investigative body to --
24 investigative committee to make -- to hear evidence and to make
25 a decision whether or not to discipline her, including

1 expulsion; is that right?

2 A I do not believe that the task force that you're
3 referring to made that recommendation or decision about
4 Dr. Stewart.

5 Q So you don't think that the legal task force made a
6 recommendation to sue?

7 A I don't remember that precisely.

8 Q Okay. But what were they doing? What was the legal
9 task force doing?

10 A They were involved primarily in the Florida
11 litigation.

12 Q Well, but the Florida litigation you sued her and
13 her husband in Florida.

14 A Let me be a little more specific. The original
15 lawsuit with the three physicians, Drs. Castillo, Geller, and
16 Klein.

17 Q Okay. Well, I think I'll be able to clear this up
18 as to whether or not your own minutes show that the legal task
19 force made the recommendation to bring the suit.

20 I'll move on. But --

21 A Okay.

22 Q -- do you think that's fair for the legal task
23 force, the people charged with making a recommendation of
24 suing, are now put on the disciplinary committee to be this
25 subjective body conducting an independent investigation?

1 That's not right, is it?

2 A I see the conflict that you're --

3 Q It's called a conflict of interest, isn't it?

4 A I just said I see the --

5 Q Well, when you saw it back then, did you voice your
6 concern? Did you speak up and say, "This is not right.
7 There's a conflict of interest. Don't" -- you know, "Don't do
8 that. It's not fair"?

9 A No, I did not.

10 Q So this says in the next sentence at the bottom of
11 page 8 -- I'm sorry -- at the bottom of the May 8th letter,
12 "You may submit written evidence of your qualification at any
13 time before this meeting, and you are strongly encouraged to do
14 so."

15 You see that?

16 A Yes, I do see it.

17 Q Now, are you aware of whether Dr. Stewart sent four
18 such documents to AAPS prior to the meeting?

19 A In reference to the hearing?

20 Q Yes.

21 A I don't think there were any, but I'm not certain.

22 Q You're not aware of the May 24th e-mail from her to
23 the Board of Directors going through in detail and denying the
24 allegations?

25 A Okay. Thinking about it, there was one, right, but

1 I can't -- I can't recall what the contents were.

2 Q Okay.

3 A Okay.

4 Q And do you think that the investigative committee
5 should have read that?

6 A Presuming that it had to do with this hearing, yes.

7 Q Okay. Now, did you also know -- and just tell me if
8 you're not the right guy to be asking this question, 'cause I
9 don't want to waste time here -- did you also know that
10 Dr. Stewart in the Florida case after you all sued her was
11 opposing jurisdiction of the Florida court since she neither
12 lives nor works or has any contact with the state of Florida?

13 A I was aware of that, yes.

14 Q And were you also aware that she would not come to
15 the state of Florida for this disciplinary hearing because she
16 did not want to subject herself to the jurisdiction of a
17 Florida court?

18 A That's my understanding, yes.

19 Q Right. And you are aware of her request, therefore,
20 to participate by telephone?

21 A I believe so, yes.

22 Q But that was denied, wasn't it?

23 A I understand it was, yes.

24 Q That's not fair, is it, to try to trap her, making
25 her come to defend herself in a disciplinary proceeding that

1 could result in her termination, come to Florida to do that and
2 therefore subject herself to jurisdiction in Florida? That's
3 not fair, is it?

4 A I was not privy to the governance directing
5 discussions of these committees, so I really can't --

6 Q I'm just asking you. Those are the facts. So
7 that's not fair, is it?

8 A The question is it's not fair that she was not
9 allowed -- would you repeat it for me, please?

10 Q It's not fair to make the disciplinary proceeding
11 occur in Florida and only in Florida when she was opposing the
12 jurisdiction of a Florida court and therefore could not go into
13 the state? That's not fair, is it?

14 A I guess you're right. It's not.

15 Q But you, nonetheless, or AAPS, nonetheless, denied
16 her the right to do this by phone, right?

17 A I understand that to be correct, yes. It was
18 declined, right.

19 Q Now, when we go back and look at the minutes of the
20 Board, a lot of your meetings take place by phone, don't they?

21 A Yes, sir. Yeah.

22 Q AAPS regularly conducts its business by telephone,
23 right?

24 A Frequently, yes.

25 Q Because your members are living all across the

1 country, right?

2 A Correct.

3 Q So why is it fair for the Board to conduct itself
4 and other committees to conduct their meetings by phone, but
5 it's not fair for her to defend herself in the disciplinary
6 hearing by phone?

7 A My answer would be it would probably be -- the best
8 way to answer that would -- would be based on the issue or the
9 reason for the meeting, whether face-to-face contact or
10 in-person contact was critical.

11 Q You think face to face would be better?

12 A Always.

13 Q And you're aware, aren't you, that she asked, "Could
14 we move this meeting back just two weeks" to the annual meeting
15 that was going to be held in Marina Del Ray, not far from where
16 she lives and works? You're aware that she asked for that
17 face-to-face meeting only two weeks later, aren't you?

18 A I don't know if it was two weeks later, but I do
19 recall that she had made that request, yes.

20 Q Well, the hearing was set for the 9th. And when was
21 the annual meeting?

22 A It was definitely after that, 22nd, 23rd, 24th,
23 somewhere in that part, third or fourth week of June.

24 Q Okay. So that's about two weeks.

25 A Okay.

1 Q What was the problem in waiting two weeks and doing
2 it then when she could appear face to face, which you say is
3 the right way to do it?

4 A You are asking me. I wasn't part of this
5 investigative committee, so I can't really comment what -- why
6 they decided what they decided. I'm sorry. I'm just not --

7 Q And all these years no one has shared that with you?

8 A No.

9 Q Okay. Take a look at Exhibit 1347.

10 (Exhibit 1347 previously marked for identification.)

11 Q (BY MR. CONWELL:) You recognize this as the minutes
12 of the Board of Directors for the conference call on June 13,
13 2012, whereby Dr. Stewart was expelled?

14 A Yes. Yes.

15 Q Okay. And you see that it says, "Doctor," at the
16 bottom, "unfinished business." So did you consider Dr. Stewart
17 to be unfinished business?

18 A I would need to really see the preceding minutes of
19 the same body to know whether this was new or unfinished
20 business.

21 Q The preceding. That's the prior Board of Directors'
22 meeting?

23 A Whatever -- yes.

24 Q Okay. But in any event, this -- there was a
25 presentation by Dr. Montes, right? See where it says, "AAPS

1 disciplinary committee and Dr. Montes" --

2 A Right.

3 Q -- "presented the recommendation"?

4 Now, he was the one we talked about earlier that had
5 the conflict of interest, right?

6 A Correct.

7 Q And you were at this meeting, weren't you?

8 A I don't remember, but based on the virtue that my
9 name is on here, I definitely was there.

10 Q Okay. It's not memorable to you, a vote to expel
11 Dr. Stewart? You had no memory of this?

12 A I have hundreds of meetings.

13 Q But how many --

14 A So --

15 Q -- where you expel a member?

16 A I'm not denying I wasn't there. I'm just saying to
17 you that I don't recall the details of it.

18 Q Did you misspeak?

19 A Did I misspeak?

20 Q "I'm not denying I wasn't there."

21 A No, I'm not denying I wasn't there. I was there by
22 virtue of seeing my name there. I just don't recall the
23 details of the meeting and actually being there.

24 Q You were there. You believe that Dr. Montes had a
25 conflict of interest, you believe that she had the right to

1 more than 15 minutes, you believe that she had the right to do
2 this by phone, and you did not speak up?

3 A No, I don't -- don't recall speaking up at all.

4 Q Well, let's look at who was making this decision,
5 look at the Board -- look at who was present.

6 Are these the people that voted up here?

7 A I would say that's correct.

8 Q So Bob Cerrato voted?

9 A He generally doesn't vote.

10 Q He did not vote?

11 A Unless there's a tie.

12 Q Did he vote or didn't he?

13 A I don't remember.

14 Q Okay. Brian Feaver, he voted, right?

15 A I presume so, but I don't see -- yeah, I presume so,
16 yes.

17 Q Well, you remember earlier I was asking you about
18 the porn that you were getting from the doctors?

19 A Yes, I do.

20 Q You said Brian Feaver was on the Board and he voted
21 to expel her. And you said, "I don't know. I'd need to look."

22 Well, here we are.

23 A Okay.

24 Q Here's the document.

25 A Okay.

1 Q He voted to expel her, right?

2 A I'm presuming he did 'cause he was at the meeting
3 and he was a Board of Director, yes.

4 Q And he's one of the people that was sending you
5 those porn e-mails that created this scandal that is at the
6 center of the whole controversy involving Dr. Stewart, right?

7 A Correct.

8 Q He's got a conflict of interest, doesn't he?

9 A Correct.

10 Q And if you look also, Dr. Joseph Gallagher is
11 voting, right? He's another one sending you pornography?

12 A Yes.

13 Q And he's the one that sends you racist e-mails
14 including the one about the black man jumping to his death on
15 the sidewalk, right?

16 A Yes.

17 Q And this is all part of this controversy involving
18 Dr. Stewart, right?

19 A Correct.

20 Q Yes?

21 A Yes.

22 Q He's got a conflict of interest, doesn't he?

23 A Yes.

24 Q Okay. Stephen Montes, we've already talked about
25 him. He's got a conflict of interest. Did he both make the

1 recommendation then vote?

2 A I don't recall. I'm sorry.

3 Q Okay. So now, you know, when you do the math here,
4 you take out the people with the conflict of interest, Stephen
5 Montes -- okay? -- Joseph Gallagher, Brian Feaver, Bob
6 Cerrato, it's mathematically impossible to get a two-thirds
7 vote, isn't it?

8 A Yes.

9 Q So this was an invalid expulsion of Dr. Stewart,
10 wasn't it?

11 A I don't know how to answer that --

12 Q Why?

13 A -- correctly.

14 Q Can't you just say yes because that's the truth?

15 A I could say yes; I could say no. I don't know if it
16 was valid or invalid.

17 Q But you don't consider it to be valid, do you,
18 because it takes a two-third vote?

19 A Well, invalid in view of the fact that those
20 individuals had a conflict of interest? Is that your point?

21 Q Right.

22 A And I agree with that point.

23 Q These disciplinary proceedings against Dr. Stewart
24 were not fair or reasonable or carried out in good faith, were
25 they?

1 A I would say they could have been a lot better.

2 Q Well, that's all I asked. I want you to look at
3 these people in the jury and tell them -- answer this question:
4 These proceedings against Dr. Stewart were neither fair nor
5 reasonable nor carried out in good faith, were they?

6 A I would say there was a lot of room for
7 improvement --

8 Q Can you answer my question?

9 A -- for the process. My answer is yes.

10 Q Okay. Yes, they were not fair?

11 A Correct.

12 Q Not reasonable?

13 A Right.

14 Q Not carried out in good faith, correct?

15 A To the best of my understanding, yes.

16 Q Okay. Well -- and you're in the middle of it all,
17 right? You go to these Board meetings; you're the CEO?

18 A That statement is true, but it doesn't necessarily
19 extend to other issues that are involved with being in the
20 position I'm in.

21 Q Okay. Basically what the power group at AAPS was
22 doing was taking Dr. Stewart and making an example out of her
23 to other potential dissenters, people who would not go along
24 with their view; is that right?

25 MS. ROSSETTI: Objection. Vague.

1 THE COURT: Sustained.

2 Q (BY MR. CONWELL:) They were -- they didn't -- not
3 identified any evidence to support her expulsion, have you?

4 A I don't know what evidence they had.

5 THE COURT: Listen to the question.

6 THE WITNESS: Okay.

7 Q (BY MR. CONWELL:) You've not identified any
8 evidence to support this expulsion, have you?

9 A Repeat that one more time, please.

10 Q I said you've not identified any evidence to support
11 this expulsion, have you?

12 A Have I?

13 Q Right.

14 A No, I did not, correct.

15 Q And we didn't get the two-thirds vote, right?

16 A From what I understand that, yes.

17 Q It wasn't fair, wasn't reasonable, wasn't done in
18 good faith, right?

19 A Correct.

20 Q So I'm -- what I'm trying to find out is why you did
21 it. And you did it to make an example out of her, right?

22 A Well, I didn't do anything.

23 Q I'm sorry. I meant the AAPS, your organization that
24 you are the CEO of and have been since 1997.

25 A I can understand how you might come to that

1 conclusion. I was not aware of anybody proceeding for that
2 sole purpose or any purpose.

3 Q Okay. And there was one other person expelled on
4 that day, and that was Leslie Radentz, right?

5 A I think that's correct, right.

6 Q The two females who spoke up on these issues were
7 the two that you expelled; is that right?

8 A There were two females that spoke up, among others,
9 and these two were expelled, correct.

10 Q Okay. Oh, were any of the men expelled?

11 A No.

12 Q Okay. Take a look at Exhibit 304.

13 (Exhibit 304 previously marked for identification.)

14 Q (BY MR. CONWELL:) Before I ask you about that,
15 there was a -- have you seen the e-mail from Dr. Cerrato to
16 Dr. Stewart dated July 27, 2012, in which he says, "Your appeal
17 has been granted"?

18 A Don't recall that.

19 Q Okay. You don't have any memory of that whatsoever?

20 A No.

21 Q Would -- can you agree with me that AAPS has never
22 given Dr. Stewart either a time or a place where she can
23 proceed with an appeal?

24 A Where she can --

25 Q Proceed with an appeal of the disciplinary -- of the

1 expulsion.

2 A My only -- my understanding -- again, I wasn't
3 involved with the committee in any way -- is that she was
4 offered an appeal. I don't know what happened from that point
5 forward.

6 Q Okay. Did the AAPS ever create an appeal board?

7 A Not to my knowledge it did not, no.

8 Q And now back to 304.

9 Is that an e-mail from you?

10 A Yes.

11 Q And did you author the amendment that's attached to
12 it?

13 A I may have.

14 Q Well, what did you mean when you said, "To Tony,
15 Dave and Bob" -- that's Bob Cerrato, right?

16 A Uhm, yes.

17 Q -- "I have finally found the time to craft a first
18 draft"? What did you mean?

19 A Okay. Well, I guess I did then, right?

20 Q Okay. And if you turn over the page at the draft
21 you created -- and by the way, I want you to note the date of
22 this is September 24, 2010.

23 A Yes, I did create this. Revisiting this, I did,
24 yes.

25 Q Okay. So this is just before the Executive

1 Committee suspended Castillo, Geller, and Klein; is that right?

2 A Yes.

3 Q Okay. And so we can look at the bylaws to see what
4 they used to say, but what you did is you put in provisions to
5 give the Executive Committee the authority to expel -- or I'm
6 sorry -- to suspend and discipline members; is that right?

7 A Yes.

8 Q Okay. That's because you didn't have any provision
9 in there that really allowed the Executive Committee to do
10 that, right?

11 A There was none.

12 Q So at the time that they were expelled -- or I'm
13 sorry -- at the time that they were suspended by the Executive
14 Committee, the bylaws had no provision that allowed them to do
15 that?

16 A Correct.

17 Q And so what you were doing was trying to plug that
18 hole; is that right?

19 A I was asked to make a -- to draft recommendations
20 for the -- for this, and I did.

21 Q Okay. And as a CEO is it part of your
22 responsibility to ensure that the bylaws are complied with?

23 A That would be the Board.

24 Q Okay. You have nothing to do with that at all?

25 A Generally, no, no.

1 Q Okay. Let me ask you how hard would it have been
2 for the AAPS to select a committee of responsible people
3 outside of the organization to conduct an independent
4 investigation into alleged misconduct?

5 A Hard in terms of -- I'm not sure I understand
6 exactly what you mean. How hard would it be to establish a
7 committee of individuals --

8 Q How much effort would it have required if the Board
9 delegated that to you? "Mr. Carbone, we want an independent
10 committee to investigate" -- excuse me -- "investigate
11 misconduct of alleged misconduct of Dr. Stewart"?

12 A Okay.

13 Q How much effort would have been required for you to
14 do that?

15 A Probably a substantial amount of effort.

16 Q Okay. And they never asked you to do that, did
17 they?

18 A Never.

19 MR. CONWELL: That's all the questions I have -- oh,
20 I'm sorry. I'm sorry. I did have one more thing.

21 Q (BY MR. CONWELL:) This -- we looked at this e-mail
22 earlier of the -- depicting a number of black people in an
23 operating room with a guy on an operating table wearing a Ku
24 Klux Klan hat. You recall that?

25 A Yes, I do recall that.

1 Q And you recall when I asked why you sent it, you
2 said it was just, "He also wanted me -- he gave me a standing
3 order to send racist e-mails"?

4 A He occasionally said, "Send me other things you
5 get."

6 Q Okay.

7 A Yes.

8 Q And so the reason you forwarded that to Mr. Bell was
9 that he just happened to be in the room and was in your office;
10 is that right?

11 A I have no recollection of that.

12 Q Let me show you your testimony on page 222, line 3
13 to 223 line 8 to refresh your memory.

14 And I asked you, (Reading:)

15 "Do you understand this is depicting a
16 number of black people in an operating
17 room with a guy on the operating table
18 wearing a Ku Klux Klan hat?"

19 You said, "Right. Yes, I do."

20 And I said, "It could be wrong, but
21 judging by his hat, this guy ain't going
22 to make it."

23 And you said, "Do I understand that? Yes,
24 I do understand that."

25 "Why did you forward this to Mr. Bell?

1 "Answer: He asked for this one for

2 certain and he just --

3 "Question: And he just happened to be in
4 the room?

5 "Answer: He was in my office.

6 "Question: You were looking at it?

7 "Answer: He was in my office frequently,
8 sometime hour by hour, back and forth.
9 And as I mentioned to you earlier, I was
10 facing this way, my computer was this way,
11 and I might have been on the telephone and
12 somebody's standing behind me and I didn't
13 even know they were there until they
14 finally moved over here, came around the
15 table, and that's why that's what happened
16 on many occasions."

17 Does that refresh your memory?

18 A Yes.

19 Q And in fact, all these photographs that we were
20 looking at, the racist and pornographic photographs, he was in
21 your offices -- or he was in your office when all those were
22 sent; is that right?

23 A He wasn't in there when all of them were sent, no.

24 Q Do you recall me asking -- let me see if this
25 refreshes your memory, on page 223, (Reading:)

1 "So all these photographs that we've been
2 looking at, was he in your office when all
3 those were sent, or did you send any of
4 these to him on your own pursuant to his
5 request that you keep them coming?

6 "Answer: It would be my comment that all
7 of these he had to have in some capacity
8 some involvement whereby he said, 'Oh, I
9 know. You know, I saw something earlier
10 this morning. If you still have it, can
11 you forward it to me?' Sometimes I would,
12 sometimes I wouldn't. If I forgot about
13 it when I got pulled in another direction,
14 I wouldn't do it."

15 Do you recall that testimony?

16 A Now, that I read it, yes.

17 Q And is that accurate or is the story you told this
18 morning accurate?

19 A Well, I --

20 MS. ROSSETTI: Objection. Argumentative.

21 THE COURT: Sustained.

22 MR. CONWELL: No further questions.

23 THE COURT: Okay. All right, ladies and gentlemen,
24 as I indicated earlier, we were going to end a couple of hours
25 early today. So we're going to adjourn for the weekend.

1 On Mondays the Court deals with all of its other matters,
2 so we will reconvene on Tuesday morning at 8. Have a pleasant
3 weekend and remember the admonition, please.

4 THE COURTROOM DEPUTY: All rise.

5 (Open court out of the presence of the jury.)

6 MR. SCHNEIDER: Your Honor, we wanted to alert you
7 to a stipulation that the parties have reached.

8 THE COURT: Sure. Oh, and this is something we will
9 read to the jury Tuesday?

10 MR. SCHNEIDER: No.

11 THE COURT: Oh. Okay.

12 MR. SCHNEIDER: The stipulation is that
13 Dr. Gallagher may testify remotely, and in turn they have asked
14 and we have agreed that Drs. Castillo and --

15 MS. ROSSETTI: Rice.

16 MR. SCHNEIDER: -- and Rice, if they need to be
17 called back, they may testify remotely as well.

18 THE COURT: Okay. Sounds good. Okay. I take it
19 Gallagher's Florida?

20 MR. CONWELL: Yeah -- uhm, Texas, I believe.

21 MR. SCHNEIDER: He's in Florida.

22 MR. CONWELL: He's in Florida? Oh, wait. Feaver's
23 Texas, that's right.

24 THE COURT: All of them then are out of the country.

25 MR. CONWELL: Yes.

1 THE COURT: Okay.

2 THE COURTROOM DEPUTY: This Court is adjourned.

3 (At 12:03 p.m. an adjournment was taken

4 until Tuesday, February 2, 2016, at 8:00 A.M.)

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CERTIFICATE OF OFFICIAL REPORTER

I, DEBRA READ, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE, THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

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